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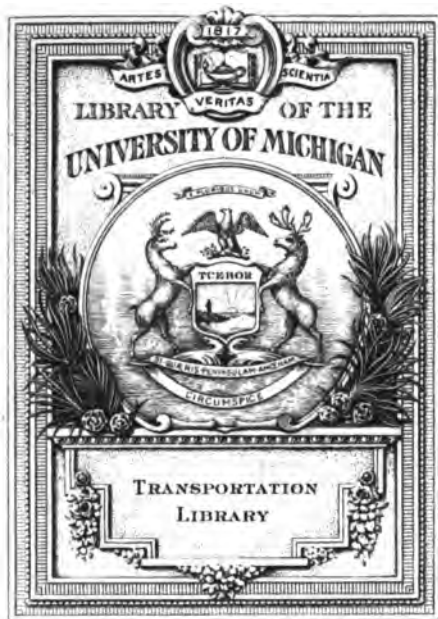
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INTERSTATE COMMERCE COMMISSION REPORTS

AMERICAN SOCIETY.

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U.S. INTERSTATE COMMERCE COMMISSION

OF THE UNITED STATES

JANUARY, 1914, TO MARCH, 1914

REPORTED BY THE COMMISSION



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ANNUAL MEETING OF THE
 SOCIETY OF THE HISTORY OF
 THE CITY OF LONDON
 HELD AT THE MUSEUM OF
 LONDON, ON THE 11TH OF
 MAY, 1881.
 THE PRESIDENT, THE EARL OF
 DUNDALK, PRESIDING.
 THE VICE-PRESIDENT, THE
 LORD MAYOR OF LONDON,
 PRESIDING.
 THE SECRETARY, THE
 LORD MAYOR OF LONDON,
 PRESIDING.
 THE TELLERS, THE LORD
 MAYOR OF LONDON, AND
 THE LORD MAYOR OF LONDON,
 PRESIDING.

INTERSTATE COMMERCE COMMISSION.

EDGAR E. CLARK, OF IOWA, Chairman.

JUDSON C. CLEMENTS, OF GEORGIA.

CHARLES A. PROUTY, OF VERMONT.

JAMES S. HARLAN, OF ILLINOIS.

CHARLES C. McCHORD, OF KENTUCKY.

BALTHASAR H. MEYER, OF WISCONSIN.

GEORGE B. MCGINTY, *Secretary.*

February 2, 1914, Commissioner Prouty resigned.

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2-1111

INTERSTATE COMMERCE COMMISSION REPORTS.

INVESTIGATION AND SUSPENSION DOCKET No. 282.

LUMBER RATES FROM POINTS IN ARKANSAS, LOUISIANA,
MISSOURI, OKLAHOMA, AND TEXAS, ALSO FROM MEM-
PHIS, TENN., TO POINTS IN IOWA AND OTHER STATES.

Submitted December 10, 1913. Decided January 5, 1914.

Proposed increased rates on lumber from southwestern points to points in northern states found to have been justified and order of suspension vacated except as to rates on yellow pine and hardwood lumber to Sioux City, Iowa, when from points on the Kansas City Southern and St. Louis & San Francisco railroads.

J. M. Souby for Kansas City Southern Railway Company.

Fred G. Wright for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

J. S. Kirkpatrick for Ingham Lumber Company and associated protestants.

J. H. Townshend for Memphis protestants.

G. F. Thomas for Arkansas Southern Manufacturers Association.

REPORT OF THE COMMISSION.

CLARK, Chairman:

This investigation involves the propriety of certain proposed increased rates on lumber from points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas, also from Memphis, Tenn., to points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin, as published in agent Leland's tariff I. C. C. No. 988, to have become effective July 17, 1913.

Through rates from the producing territory involved have hitherto been constructed, for the most part, on combinations of intermediate rates to and from Cairo, Thebes, and East St. Louis, Ill., or St. Louis, Mo., the rates up to these gateways being published in the individual tariffs of originating carriers. Some of the latter tariffs have been in effect for many years; certain of them were issued prior to the promulgation of the Commission's rules governing the issuance of tariffs, to which they do not conform. A practical necessity for the reissuance of these tariffs has long existed, but, instead of

reissuing their various individual tariffs, respondents, with a view probably to economical publication as well as convenience of reference and uniformity of rates, decided upon publishing one single tariff which should incorporate all the rates named in the tariffs of the various initial carriers. After much delay such consolidation is attempted in agent Leland's tariff here under suspension. The tariff is voluminous and names about 5,000 points of origin and approximately 7,000 points of destination. It provides about 35,000,000 rates and is not restricted to the mere republication of rates carried in the old tariffs, but includes also a revision of rates and territorial groupings.

Protests were filed against the proposed increased rates by a few individual shippers and by commercial organizations representing other shippers, as a result of which we felt constrained to suspend the operation of the tariff. Subsequent to such suspension, and before the hearing, it developed that some of the increased rates, against which specific protests had been made, result from publishing joint through rates which exceed the sums of the intermediate rates applicable through the various gateways mentioned. Respondents disavow any intention of establishing joint rates higher than the lowest available combinations and say they will check out and eliminate from the tariff by supplement all such rates.

The proposed increased rates apply chiefly from points on the Kansas City Southern Railway and the St. Louis & San Francisco Railroad, hereinafter called the Frisco. Antedating this proceeding, the Kansas City Southern, by supplement No. 46, to its tariff I. C. C. 1945, proposed to be superseded by agent Leland's tariff here under suspension, had sought to increase the rate from group-1 points on its line to Des Moines, Iowa, for the purpose of putting Des Moines on a parity with Omaha, Nebr. That schedule was suspended by our *Investigation and Suspension Docket No. 240* in which a hearing was had in July last. Before we could dispose of that case agent Leland's tariff carried forward, together with all other rates in the Kansas City Southern tariff, the suspended rate to Des Moines. At the suggestion of the Commission the Kansas City Southern withdrew the rate involved in *Investigation and Suspension Docket No. 240*. The record in that case has been stipulated into the instant case and will be considered as a part thereof.

The promised elimination of all joint rates which exceed the sums of intermediate rates has apparently left but two protestants and their objections are limited to the proposed increased rates from points on the Kansas City Southern and Frisco roads. These we shall proceed to consider; first as to the Kansas City Southern:

The lumber involved is of two principal kinds; yellow pine and hard wood. The area of production of yellow pine on the Kansas City

Southern extends from Neosho, Mo., to Port Arthur, Tex. The points of production are divided into five groups, as follows: Group 1, Neosho, Mo., to Page, Okla., inclusive; group 2, Fogels spur, Okla., to Vandervoort, Ark., inclusive; group 3, Hatton, Ark., to De Queen, Ark., inclusive; group 4, Prairie Oil & Gas Company spur, Ark., to Wilton, Ark., inclusive. South of the last-mentioned point the entire line is in group 5. Respondent's tariff applies common rates on all lumber of domestic production except butternut, cherry, holly, and walnut. The tariff establishes specific rates from groups 1 and 5. Rates from groups 2, 3, and 4 are made by the addition of differentials group 1 rates as follows: Group 2, 1 cent; group 3, 3 cents; and group 4, 5 cents.

The production of yellow pine in groups 1, 2, 3, and 4 has materially decreased in recent years. It is a "cut-over region." The present supply is mostly in group 5. The quantity of yellow pine produced in groups 1 to 4, inclusive, is small as compared with that produced in group 5 and is said to be not more than 1 per cent of the entire production in the south. The center of production of yellow pine on respondent's line has moved south in the last 10 years from Leesville, La., to De Ridder, La. Very little is shipped to northern territory from points north of Page.

The increases are general from points in group 1 to 4, inclusive, although respondent's witness demurs to any suggestion that the changes indicate a horizontal advance. As to destinations, the proposed increases are principally to points in Missouri north of the Missouri River and in Iowa, with relatively fewer changes to points in the other states named.

A witness for the protestant against the proposed increased rates on yellow pine from points on the Kansas City Southern and Frisco railroads submitted statistics designed to show the relative number and general amount of the proposed increases from points on the Kansas City Southern, by taking every fifth destination point shown in Leland's tariff and adding thereto the more important stations which would not have been included under the arbitrary method of selection. The points of origin covered by the exhibit are group-5 points: Page, Okla., and Waldron, Bates, Cove, and King, Ark. The total number of destination points shown is 728. Witness summarizes the data as follows:

From—	Reductions.	Increases.	No change.
Page, Okla.....	16	610	102
Cove, Ark.....	16	598	114
Waldron and Bates, Ark.....	16	608	104
King, Ark.....	15	598	115
Group-5 points.....	22	34	672

Increases varying from one-half cent to 3.3 cents are proposed from practically all points in groups 1, 2, 3, and 4. In the more extensive group 1 about 42 per cent of the increases are in the sum of 1 cent per 100 pounds, and this is perhaps a fair average of all proposed increases from these groups.

Some of the lines extending northward from the producing territory involved reach not only St. Louis and other gateways to the eastward but also Kansas City to the westward. Several of the roads serving the destination territory involved likewise reach both the eastern and western gateways. The situation makes for equal rates through the Kansas City and St. Louis gateways.

To the destination territory, rates from group 5 are usually made on the Thebes and Cairo combinations, while the rates from the four upper groups are made with relation to rates carried by other lines from competitive producing territory. It is stated that the present rates from groups 1 to 4 are the result of severe competitive conditions; particularly so in respect to rates from group-1 points which were originally made in competition with what is known as the Leeper-Grandin district, and the territory on the Kansas City, Fort Scott & Memphis Railroad, now a part of the Frisco, east of Springfield, Mo., and from the territory in southeast Missouri and northeast Arkansas, particularly the territory just north of Little Rock, Ark., on the St. Louis, Iron Mountain & Southern, hereinafter called the Iron Mountain, and St. Louis Southwestern, hereinafter called the Cotton Belt, roads.

Formerly the competition from group 1 was largely with Grandin and Birch Tree, Mo., in the Leeper-Grandin district. The Grandin mill, one of the largest of its kind, has been removed to West Eminence, Mo., while the mill at Birch Tree has been abandoned, these changes resulting from the fact that the timber has been practically exhausted. Respondent asserts that competition from the sources mentioned is less keen than formerly and that rates of other carriers from that district have been increased in recent years, while it has not been able to increase its rates in equal ratio. It asserts that its rates on yellow pine are abnormally low and that it now desires to raise them to the normal level on traffic from the real and present sources of competition.

In support of its claim that rates from producing points on its line are relatively low compared with points on the line of competing carriers which are also respondents in this case, respondent compares its group-1 rates to Des Moines, as a typical point, with rates from stations on the Cotton Belt, on the Iron Mountain, and on the Chicago, Rock Island & Pacific, hereinafter called the Rock Island. It shows that Neosho, Mo., the first station in group 1, is 174 miles from

Kansas City and 395 miles from Des Moines; that Page, Okla., the last station in group 1, is 339 miles from Kansas City and 560 miles from Des Moines. The present rate from group-1 points to Des Moines is $18\frac{1}{2}$ cents; the proposed rate is $19\frac{1}{2}$ cents. Randles, on the Cotton Belt, is 147 miles from St. Louis, the gateway, and 490 miles from Des Moines, and the rate is $19\frac{1}{2}$ cents. Brinkley, Ark., is 335 miles from St. Louis and 678 miles from Des Moines, and the rate is $22\frac{1}{2}$ cents. There is no grouping of points on the Cotton Belt, but the rates increase as the distance increases and it is pointed out that, measured by distance, Randalls, with a rate of $19\frac{1}{2}$ cents to Des Moines, would fall within group 1 on the Kansas City Southern, from which group the proposed rate is $19\frac{1}{2}$ cents. Brinkley, 118 miles farther distant from Des Moines than the most distant station in group 1, takes a rate of $22\frac{1}{2}$ cents as compared with $19\frac{1}{2}$ cents proposed from group 1.

Allenville on the Iron Mountain is 145 miles from St. Louis and 485 miles from Des Moines. The rate is 19 cents as compared with the proposed rate of $19\frac{1}{2}$ cents from Page to Des Moines, a distance of 560 miles. Nettleton, Ark., on the Iron Mountain, is 274 miles from St. Louis and 614 miles from Des Moines; the rate is $22\frac{1}{2}$ cents as compared with the proposed $19\frac{1}{2}$ -cent rate from Page. Kensett, Ark., also on the Iron Mountain, is 332 miles from St. Louis and 672 miles from Des Moines; the rate is $23\frac{1}{2}$ cents as compared with proposed rate of $19\frac{1}{2}$ cents from group-1 points and $21\frac{1}{2}$ cents from the most distant point in group 2, which is 623 miles from Des Moines.

Respondent also compared the rate of $24\frac{1}{2}$ cents from Mansfield on the Rock Island with that of $19\frac{1}{2}$ cents from Howe, Okla., in its group 1. The Rock Island, however, in order to hold traffic to its own line carries it over a circuitous route through Oklahoma and Kansas. The distances from Mansfield and Howe are not fairly comparable. The Rock Island rate is much higher than the Kansas City Southern rate and if it is influenced by competitive conditions it must be from points other than those in group 1 on the Kansas City Southern.

The principal purpose of the proposed increased rates is said to be to effect an alignment of rates as between producing points on respondent's line and producing points on competitive lines. It is also contended that the difference in rates between groups 1 and 5 is too small. The present rates from group 1 have been in effect for a number of years. It is asserted that during this time rates from group 5 have been increased but that rates from the other groups have not been increased to the same extent.

The tariff under suspension not only increases the rates on hardwood from group-1 points, which as we have seen are applicable to
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all lumber of domestic production except butternut, cherry, holly, and walnut, but it is proposed therein to break up the present grouping so far as it applies to hardwood. The proposed regrouping on hardwood lumber is as follows: Group 1, Neosho to Noel, Mo., inclusive; group 2, Wye, Ark., to Westville, Okla., inclusive; group 3, Barren Fork, Okla., to Morris Ferry, Ark.; group 4, Winthrop, Ark., to Ashdown, Ark., inclusive; and south of the latter point, group 5, from which the rates on hardwood and yellow pine are the same. No change is proposed in the basis from group 5 on either yellow pine or hardwood.

In the proposed regrouping of points from which hardwood is shipped the first 70 miles in present group 1 extending from Neosho to Westville is divided into groups 1 and 2. Proposed group 3 is 209 miles long or 54 miles longer than the present group 1. As has been noted, the present group rates grade up toward the south, group-2 rates being higher than group-1 rates, and so on. The effect of the proposed regrouping of points with respect to hardwood is to give to all the points proposed to be put in group 2 and to all points proposed to be put into group 3 relatively higher rates than they now have, they being at present all included in group 1. Some points now in group 4 are proposed to be put into group 3 and given relatively lower rates.

The natural inquiry is, What particular effect, in addition to the general increase in rates, does the regrouping have on the hardwood traffic? The result may be brought down to a close view by some specific comparisons, which for practical purposes will be made of the present rates from Stillwell and Marble City, Okla., now in group 1, but which under the proposed changes will fall into group 3; De Queen, now in group 3, which will remain in group 3 as proposed; Horatio, Ark., which is now in group 4 but within the proposed group 3:

To—	Present rate on yellow pine and hardwood.	Proposed rate.	
		Yellow pine.	Hardwood.
Sioux City from—			
Stillwell, Okla.....	22	25	28
Marble City, Okla.....	22	25	28
De Queen, Ark.....	25	28	28
Horatio, Ark.....	27	28	28
Des Moines, Iowa, from—			
Stillwell, Okla.....	18½	19½	21
Marble City, Okla.....	18½	19½	21
De Queen, Ark.....	21½	23½	24
Horatio, Ark.....	23½	25½	25
Mason City, Iowa, from—			
Stillwell, Okla.....	24	25	28
Marble City, Okla.....	24	25	28
De Queen, Ark.....	27	28	28
Horatio, Ark.....	29	30	28

The destination points shown are taken from respondent's exhibit, in which, its witness states, the changes shown are representative of the increases proposed to all destination territory covered by the tariff. The increased rates shown in the comparison appear to fairly represent the maximum increases so far as they have been brought to our attention and it is not deemed necessary to extend the comparisons to greater length. They sufficiently show, we believe, the effect of the proposed regrouping of hardwood lumber producing points. It will be observed that throwing group-1 points into group 3 would have the effect of increasing the rates on the hardwood lumber over those proposed on yellow pine. All points now in group 3 would remain in that group and would, of course, be relatively unchanged. Points in group 4 brought within group 3, while still affected by the general increase, would not be increased in the same ratio as points in groups 1, 2, and 3. It is pertinent to remark, however, that respondent shows that from November, 1911, to September, 1912, but few cars of hardwood moved from groups 3 and 4 as at present defined, and the apparent showing of parity between the increases in rates on hardwood from these groups as compared with yellow pine is without practical significance.

The production of hardwood on respondent's line is chiefly in the upper groups, and the center of production unlike that of yellow pine has remained practically stationary for some years past. The production is said to be relatively small compared with the total production in adjacent competitive territory and has amounted to but little in recent years. The volume of the movement is less even than that of yellow pine. A statement of all shipments for each alternate month from November, 1911, to September, 1912, inclusive, shows for the months stated a total of 389 cars. The distribution according to present and proposed grouping is indicated by the following table:

	Group 1.	Group 2.	Group 3.	Group 4.	Group 5.	Total.
Present.....	187	22	58	24	96	389
Proposed.....	47	12	221	11	98	389

As stated, no change is proposed in the basis of rates from group 5 either on yellow pine or hardwood, but there are a few changes in particular rates. The table indicates how the bulk of the hardwood tonnage now in group 1 would, by the proposed regrouping, be thrown into group 3. Hardwood produced on this respondent's line is immediately competitive with that originating on the lines of other respondents operating in the eastern part of the state of Arkansas,

which is recognized as a hardwood district. There is some production in eastern Oklahoma, but the competition is not potent.

The hardwood lumber from points of origin on respondent's line, destined to Iowa and other northern markets, moves on joint through rates via Kansas City, which rates are controlled by the combinations through Thebes, Cairo, St. Louis, or East St. Louis. The reasons advanced by respondent in justification of the proposed regrouping and increased rates on hardwood lumber may be said to resolve themselves into two distinct propositions: First, that the rates should, as with yellow pine, be so aligned as to bring them up to a parity with rates from competitive territory on other lines, particularly with the rates on lines of carriers hauling hardwood lumber from the district in eastern Arkansas. Second, that the transportation of hardwood lumber from points on respondent's line consists of finished lumber and products from manufacturing mills, instead of rough lumber from the sawmills as in the case of yellow pine. Respondent urges that the sparsity of hardwood on its line does not commercially justify the location of mills in the timber but necessitates hauling the rough material in to be milled at a few central points. It avers that it renders considerable extra service in the hauling of logs to these mill points at rates which are not fairly remunerative, and contends that the regrouping will result in only a fair average rate on the total movement of hardwood from the originating territory on its line and will put its shippers on a parity with those from other and competing sections.

Respondent submitted statements of tonnage and earnings on its lumber traffic for the year ending June 30, 1912, and for the 11 months ending May 31, 1913, which shows the following:

Tonnage and earnings.

Commodity.	Tons carried.	Per cent.	Mills per ton-mile.
1912.			
Pine lumber.....	766,359	23.04	5.7
Other lumber.....	81,475	2.45	5.9
Ties, posts, logs, and piling.....	75,713	2.28	7.3
1913 (11 MONTHS).			
Pine lumber.....	919,541	25.46	6.2
Other lumber.....	88,894	2.37	6.0
Ties, posts, logs, and piling.....	136,626	3.78	7.0

The transportation of forest products on the Kansas City Southern in 1913 constituted about 33 per cent of its aggregate freight tonnage. Its tonnage for 1913 shows a material increase over 1912, and its per ton-mile revenue for the same period increased $\frac{1}{2}$ mill, or

from 5.7 mills to 6.2 mills. The line of this respondent is, for statistical purposes, grouped with those in the western district of the United States. The comparison of the per cent of tonnage in forest products to all tonnage on its line, and of its per ton-mile earnings on this commodity with the tonnage and per ton-mile earnings of other carriers in this district, as well as for the country generally, is shown in the following table, in which the reports of respondent for the fiscal years 1912 and 1913 are compared with the general statistics for 1911, the latter not being available for the fiscal year 1912:

Per cent of all traffic and per ton-mile revenue on forest products.

	Per cent of all traffic.	Per ton- mile revenue.
		<i>Mills.</i>
Kansas City Southern, 1912.....	28.95	5.75
Kansas City Southern, 1913.....	33.02	6.20
Western district.....	18.74	7.20
United States.....	10.88	6.00

The comparison shows that notwithstanding the increase for the last year respondent's per ton-mile earnings are still below the general average of carriers in that section of the country and even below the average for the United States.

With respect to proposed increased rates from points on the Frisco, it is stated that a check of the tariffs which are proposed to be canceled by Leland's tariff, which is under suspension, disclosed different and varying rates from certain territory north of the Arkansas river. In lining up rates from these points it was necessary to increase some while reducing others. It is stated that the changes in rates on yellow pine are aligned with the rates of other carriers and that the changes in rates on hardwood will generally effect a reduction. From some of the originating territory on the Frisco no joint rates were published prior to the issuance of Leland's tariff. The establishment of joint rates may have resulted in the publication of some rates in excess of the sums of intermediate rates. Some criticism was made by protestant of the rate to Liberty, Mo., increased from 15 cents to 21 cents. Respondent asserts that the rate was originally established in error; that Liberty is just outside of Kansas City and should be on the same basis as Kansas City.

Protestants against the proposed increased rates on yellow pine introduce with respect to the Frisco an exhibit similar to the one relating to increases on the Kansas City Southern. The exhibit shows changes proposed in the rates from Moyers and Bokhoma, Okla., and from stations Hope to Ashdown, Ark., inclusive. The

destination points number 433. Witness for protestant summarizes the proposed changes as follows:

From—	Reductions.	Increases.	No changes.
Moyers, Okla.....		433	1
Bokoma, Okla.....	6	395	31
Hope to Ashdown, Ark., inclusive.....	10	1	422

The increases vary from one-half cent to 6 cents; a fair average would probably not exceed $1\frac{1}{2}$ cents.

It is said that no increases are proposed in the tariff under suspension in any lumber rates from points on the Iron Mountain, and that the only increased rates proposed from points on that line apply to agricultural implement wood from five points of origin in Oklahoma to 31 points of destination. The witness for this respondent avers that there are numerous reductions on lumber and articles taking lumber rates which aggregate about 99 per cent of the changes made from points on that line.

The principal hardwood producing territory on the Iron Mountain in Arkansas lies east of its line from Moark, Ark., through Little Rock to Texarkana. Rates are made on combination through Thebes, Cairo, St. Louis, or East St. Louis. No increases, respondents' witness states, have been made in its rates on hardwood lumber unless in the establishment of new joint rates it may have happened in a few instances through error or inadvertence that they exceed the combination of intermediate rates. It is pointed out that rates on hardwood from representative points on this line to Sioux City, Iowa, show material reductions.

Witness for respondent Rock Island and its short-line connections states that where any changes are made from points on those lines they represent, as a whole, reductions from the old rates. Some changes result from the establishment of joint rates on the basis of the sum of the intermediate rates. Rates from western Arkansas and Oklahoma to points west of the Mississippi River are said to be reduced on an average from $1\frac{1}{2}$ cents to 6 cents. This was necessary in order to compete with cross-country stations located on the Kansas City Southern. Some slight increases on hardwood were made from eastern Arkansas points to Sioux City, due to the fact that joint rates were brought up to the combination of intermediate rates via Thebes, Cairo, and St. Louis, the factor north of the gateways having been increased some time ago from one-half cent to $2\frac{1}{2}$ cents. Witness for this respondent asserts that all of its joint rates are intended to be constructed on the basis of the lowest combination in effect.

The Atchison, Topeka & Santa Fe originates little or no hardwood lumber in the territory involved. The only protest relative to any increased rates from Santa Fe points was brought by a St. Louis protestant in connection with the cancellation of through joint rates from points on the Louisiana & Arkansas Railroad. Respondent says this was done through inadvertence, points out that the route is circuitous, and on this account joint rates are not called for, but expresses a willingness nevertheless to observe the Commission's wishes in the matter, and if desired, to reestablish the joint rates.

Aside from the cancellation of these through joint rates, it is said that there are no increased rates from Santa Fe points but that there are thousands of reductions. Prior to the issuance of Leland's tariff the Santa Fe had no through rates from what is described as its originating territory in Oklahoma, but observed the Texas-Louisiana rates as maxima. In the new tariff through rates are established from points on this line in groups 3 and 4 which are less than the Texas rates, also less than the combination of intermediate rates.

Only two witnesses appeared to protest against the increased rates. They represented only the protestants who object to the proposed increased rates on yellow pine from points on the Kansas City Southern and Frisco. These protestants are either owners or part owners of mills at Blocker, Tex.; Waldron, Bates, Cove, Womble, and King, Ark.; and at Page, Moyers, and Bokhoma, Okla. Waldron, Bates, Cove, King, and Page are all on the Kansas City Southern in groups 1, 2, and 3; Moyers and Bokhoma are on the Frisco in group 3; Womble is on the Iron Mountain, and Blocker is on the Marshall & East Texas Railroad, both the latter being in group 5.

One of these witnesses who was the only protestant appearing at the proceedings in *Investigation and Suspension Docket 240*, and who, as he was the only protestant offering testimony, may be deemed the principal protestant in this proceeding, stated that, other than the mills he represented, there were none operated in groups 1, 2, and 3 on the Kansas City Southern or the Arkansas & Western "that amount to anything" and that his mills were the only ones in these groups that would be affected by the proposed rates. The product of these mills, including the output of a mill which is handled for another party at Hatfield, Ark., in group 2, is about 1,350 cars per annum. The only other mill on the Kansas City Southern of which protestant has any knowledge, produces on an average as much as one of his own mills, and together they represent the total mill interests in the northern groups on the Kansas City Southern. Protestant ships about 100 cars per month from the mills in group 5 and about 200 cars per month from all other mills. He ships about 250 cars per year to Des Moines, of which approximately 50 per cent move over

the Kansas City Southern. His principal market is in Missouri, Iowa, Minnesota, and Wisconsin, with some few sales in Kansas, Nebraska, Illinois, and Indiana.

He described the country included within groups 1, 2, and 3 as being very rough and mountainous, group 1 being located principally in the midst of the Ozark Mountains and including the highest part thereof. Somewhat better conditions exist in group 3 than in groups 1 and 2. The yellow pine, which is known as short leaf, is thin and scattered and yields only 1,000 to 1,500 feet of lumber per acre, as against 5,000 to 15,000 feet per acre for the general run of yellow pine in group-5 territory. The method of operation in groups 1, 2, and 3 is to put small sawmills in the woods, cut the timber within reach, then move to another location, where the same process is repeated. This process is necessary because the timber is too thin and the country too rough to justify putting in steel logging trams. The quality of the yellow-pine lumber cut in groups 1, 2, and 3 is below that cut in group 5. In comparing the cost of production protestant states that it costs \$13 to \$14 to put the better quality of lumber on the cars in groups 1, 2, and 3 as compared with \$10 at the Blocker mill in group 5, and, notwithstanding the difference in the present rates, group-5 lumber brings about \$1 per thousand feet more on the same market than does that produced in groups 1, 2, and 3.

This protestant does not deal in hardwood lumber and is not acquainted with the variations in prices between yellow pine and hardwood. The product of the Page mill finds a market largely at points in Oklahoma, the Oklahoma state rate from Page being from 12 to 14 cents to the different points as compared with the rate of 17 cents to Kansas City. Protestant's principal markets, however, are, as already stated, in northern Missouri and Iowa.

Protestant's witness testified that "when the Kansas City Southern was first built" the question of an adjustment of rates on yellow pine as between mills operating in northern Arkansas and group-5 points was pressed upon that respondent by operators in northern Arkansas. The character of the country, the sparsity of timber even at that time, the handicaps attending operation, cost of production, and other features were presented to respondents' traffic officials as reasons for relatively lower rates from group-1 points than from group 5, as a result of which the group-1 differential was fixed at 8 cents. Witness states that the mills in that section were erected, began operations, invested their money, and have been doing business on the theory that they would be protected in those differentials and that the differential between group-1 and group-5 points to Des Moines had been maintained at 7 to 8 cents. Respondent cites

its tariffs, however, to show that the differential of group 5 over group 1 has fluctuated during the past 15 years as follows:

	Cents.
June 23, 1898, to May 4, 1900.....	5
May 4, 1900, to April 15, 1903.....	6
April 15, 1903, to August 1, 1910.....	8
August 1, 1910, to date.....	6½

From this it appears that during more than half the time for the past 15 years the differential has been 6½ cents or lower.

Protestants offered no testimony directly bearing upon the reasonableness of the proposed rates, save that they call attention to the fact that the present rate of 18½ cents from Page to Des Moines, a distance of 560 miles via Kansas City, yields greater per-ton-mile earnings than the rate of 25 cents from Lemonville, La., to Des Moines, a distance of 971 miles via St. Louis, or from De Ridder, La., to Des Moines via Kansas City, a distance of 913 miles. This comparison, the witness contends, shows that the rate from Page is even now more remunerative than the rate from Lemonville or De Ridder, and hence should not be increased. It is sufficient to say that this contention establishes nothing, since it is a well-recognized fact that the rate per ton-mile ordinarily decreases as the distance increases. It may be appropriate to here state that the per-car earnings upon basis of the minimum weight applicable to a 36-foot car would, at the rates in effect, yield per-car earnings of \$62.90 from Page as compared with \$85 from Lemonville or De Ridder.

Protestants admit that their concern with the specific rates from group 1 is secondary to the question of the differential to be maintained between groups 1 and 5. They would have made no objection to a readjustment which advanced the rates from group 5 so long as the group-1 rates were not advanced. They assert that only the maintenance of a substantial differential in the rates between these respective groups will enable them to continue in business, and their witness admits that the question of the differential itself would be more or less a matter of indifference if they could manufacture at the same cost in group 1 that they and their competitors do in group 5.

On its comparisons with rates from selected points at which competition is said to exist, respondent was unable to show any actual movement of yellow pine from several of the selected points. As to two of the points with which comparison is made, however, it appears that there is a movement, and from one of these, namely Kensett, otherwise known as Doniphan, on the Iron Mountain, there is a movement of yellow pine comparable with, if not exceeding, the total movement from the upper groups on the Kansas City Southern.

In *Investigation & Suspension Docket No. 240* there was no protest against the proposed increased rates on hardwood to Des Moines. In the instant proceeding Sioux City is the only protestant against the proposed rates on hardwood and it has offered no evidence in support of the allegations in its protest. Its counsel appeared at the hearings, cross-examined respondents' witnesses, and has filed a brief. The statement before referred to, filed by respondent Kansas City Southern, covering hardwood moving from affected points on its line for a period of six months, taking each alternate month through a year, does not show a single car shipped to Sioux City. It is, therefore, not apparent from the record that this protestant has any real or direct interest in the rates. The evidence shows that the hardwood movement from the upper group on the Kansas City Southern consists largely of railroad crossties shipped to Omaha, Nebr., St. Joseph and Laredo, Mo., for delivery to connecting carrier-consignees who receive the benefit of their proportions of the through rates because the shipments constitute company material.

Counsel for protestant against the proposed rates on hardwood to Sioux City contends on brief that the hardwood increases in this case are brought about by consolidating the hardwood territory of old groups 1, 2, 3, and 4 into a new single group 3. This is not correct, as will be seen by reference to the preceding description of the manner in which the proposed new group 3 is to be made up. He further contends that the short-line distance from Kansas City Southern points, as well as from Frisco and Missouri, Kansas & Texas points to the so-called twin cities, St. Paul and Minneapolis, Minn., is through Sioux City; that the distance from Sioux City to the twin cities is approximately 300 miles, but that notwithstanding these facts, respondents propose to make the rates to Sioux City the same as to the twin cities.

Whether or not traffic to the twin cities moves through Sioux City does not appear and the record contains no comparison of the distances via the various routes. It does appear, however, that the proposed rate from group-1 points on the Kansas City Southern and from related points on the Frisco and Missouri, Kansas & Texas is 28 cents to Sioux City and to the twin cities as well. Counsel points to the fact that the 28-cent rate to Sioux City is from certain points in excess of the combination of rates on Council Bluffs, Iowa, which is 27.3 cents, made up of 21 cents to Council Bluffs, plus the Iowa state rate of 6.3 cents, Council Bluffs to Sioux City. We may add that the combination via Omaha is 28.8 cents, made up of 21 cents to Omaha, plus 7.8 cents, Omaha to Sioux City. All the several factors are on file with this Commission.

We may fairly summarize the evidence in this case upon the propriety of the proposed increased rates from Kansas City Southern points by

saying that respondent endeavors to justify them upon the grounds: (1) That the present rates were originally established on a low basis, compelled by competitive influences which have ceased to be controlling, and that they are consequently now below the level of rates from the territory with which the mills in groups 1 to 4 are in competition. (2) That the proposed rates are reasonable relatively, that is, by comparison with rates carried by the other respondents to the same destination territory. (3) That the proposed rates are reasonable *per se*. (4) That the circumstances and conditions attending the transportation of hardwood are so dissimilar from those attending yellow pine transportation as to justify relatively higher rates on the hardwood.

The objections to the proposed increases in yellow-pine rates are: (1) That respondent's action in seeking to increase the rates from group 1 without making a corresponding increase from group-5 points is a breach of the implied understanding upon which protestants and others invested their capital in the establishment of mills in northern Arkansas and eastern Oklahoma. (2) That respondent is in duty bound to maintain a differential of 7 or 8 cents between groups 1 and 5. (3) That the natural disadvantages attending the production of yellow pine in groups 1, 2, and 3 render any increase in the rates from these groups or related points on the Frisco unreasonable and unjustly discriminatory.

The record does not sustain protestants' contention that there was an implied understanding between respondent and shippers in group 1 that there should be established and maintained between groups 1 and 5 a differential of 7 or 8 cents. The testimony of protestants' witness was based upon mere hearsay and is admitted by him to be such. Nor would it be material if such an agreement had been made, since it is fundamental that respondent's duty is to charge a reasonable rate for the service performed and by that we mean not only must it not charge a rate that is unreasonably high, but also that it would be unlawful to charge a rate so low as to be noncompensatory or impose a burden upon other traffic.

In *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 27 I. C. C., 302, we had before us a contention that rates on yellow pine from the upper groups on the Kansas City Southern to Omaha, South Omaha, Grand Island, Blue Hill, and Lincoln, Nebr., were unreasonable because when reductions had theretofore been made from group 5 no corresponding reductions had been made from the four upper groups. In the report on that case, we said, page 314:

The theory runs through these cases that rates from groups 1, 2, 3, and 4 have been uniformly 8, 7, 5, and 3 cents, respectively, less than from group 5, but an examination of the statement shows that the differentials under group 5 rates have varied widely.

* * * There is no record upon which these rates can be held to be unreasonable, or upon which a finding that they should be lower by certain amounts than the rates from group 5 could be based.

So far as concerns their bearing upon the reasonableness of the rates, the natural disadvantages and attendant high cost of production of lumber in the upper groups are in no sense controlling. It is not the province of this Commission to adjust rates for the purpose of equalizing natural or commercial disadvantages. *I. C. C. v. Diffenbaugh*, 222 U. S., 42, 46.

The protestant's evidence against the proposed increases on yellow pine, it is fair to say, is limited to showing the high cost of production resulting from natural disadvantages. It gives no consideration to the reasonableness of the proposed rates *per se*, nor to their relative reasonableness compared with other rates. It relates wholly to commercial conditions and disadvantages and not at all to the services or conditions of transportation. This is true of protestant's testimony with respect to the proposed rates of both the Kansas City Southern and the Frisco railroads.

The purpose of the Frisco, as stated by its witness, is to eliminate inconsistencies in the rates from certain points on its line and also to bring its rates in line with those from competitive territory on the lines of other carriers. We have not been materially assisted by the evidence in the case so far as it touches upon the Frisco rates, but the instances brought to our attention and the comparisons we have been able to make, seem to bear out the declared purpose of respondent. Protestants do not controvert the testimony of this respondent, but content themselves with showing the number and extent of the increases.

Upon consideration of all the facts with respect to the proposed increases as a whole, it is our conclusion that respondents have fairly sustained the burden of proof cast upon them by the statute so far as it affects the proposed increased rates on yellow pine and hardwood, except to Sioux City, Iowa. The present rates to Sioux City are the same on yellow pine and hardwood. The proposed rates are the same on both kinds of wood except from group 4 and are as follows, in cents per 100 pounds:

	Group 1.	Group 2.	Group 3.	Group 4.
Yellow Pine.....	25	26	28	28
Hardwood.....	25	26	28	30

It is not at present proposed to increase the rates to Council Bluffs and Omaha. The effect of the proposed increases to Sioux City on hardwood from the points now in groups 1 and 2, which, under the
29 I. C. C.

discriminatory as compared with the rates between the three last-mentioned points and Evansville, Ind., Cincinnati, Ohio, and Louisville, Ky. The rate on fat cattle from Owensboro to New York City was also attacked as being unreasonable and unjustly discriminatory as compared with the rates from Cincinnati and Louisville to that point. The prayer of the complaint was for the removal of the alleged discriminations and reparation on specific shipments in the amount of the difference between the rate in effect and the rate found reasonable by the Commission.

A hearing of the complaint was had and the case submitted to the Commission without briefs and oral arguments. On May 6, 1913, the Commission rendered its decision in the matter and entered an order condemning the rates under attack from East St. Louis and Chicago to Owensboro, and prescribing reasonable maximum rates for a period of not less than two years after July 15, 1913; 27 I. C. C., 54. The rates so prescribed were as follows: From East St. Louis, Ill., to Owensboro, 15 cents per 100 pounds, with a minimum carload weight of 20,000 pounds; from Chicago, Ill., to Owensboro, \$32 per carload. All the carriers which handle traffic between Owensboro and New York City were not made parties defendant to the complaint, and for this reason no order with respect to the rate to New York was entered. The Commission, however, stated that in its judgment the rate from Owensboro to New York City should not exceed the rate contemporaneously in effect from Evansville to New York City. No reparation was awarded.

The defendants filed a petition for rehearing, which was granted, pending which they published and put into effect the rates prescribed by the Commission.

The carrier mainly interested in this proceeding is the Louisville, Henderson & St. Louis Railway. Its track is situated south of the Ohio River, and for some distance follows the course of the river closely. Its main line extends from Strawberry, Ky., on the east, to Henderson, Ky., on the west, a distance of 138 miles. It reaches Louisville on the east and Evansville on the west by virtue of trackage rights over the Louisville & Nashville Railroad. It also operates a branch line which extends from Irvington, Ky., on its main line, in a southwesterly direction to Fordsville, Ky., a distance of about 42 miles.

Owensboro, the city in which complainants are located, is on the main line of the Louisville, Henderson & St. Louis Railway, a distance of 42 miles east of Evansville and 114 miles west of Louisville. The city is served by three carriers—the Louisville, Henderson & St. Louis Railway, the Illinois Central Railroad, and the Louisville & Nashville Railroad. From East St. Louis the last two mentioned carriers reach Owensboro by means of branch lines. The short line

No. 4901.

ROCK SPRING DISTILLING COMPANY ET AL

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL

Submitted December 5, 1913. Decided January 5, 1914.

In a previous decision, 27 I. C. C., 54, the Commission found that the rates on cattle from East St. Louis to Owensboro, Ky., should not exceed 15 cents per 100 pounds, with a minimum weight of 20,000 pounds; from Chicago, \$32 per car. These rates were established by the defendants, effective July 15, 1913. A rehearing was granted upon petition of the carriers who sought to establish the propriety of a rate of \$45 per car from East St. Louis and a rate of 25 cents per 100 pounds, minimum weight 20,000 pounds, from Chicago. *Held:*

1. That with respect to the rate from East St. Louis the Commission adheres to the principle announced in the case of the *Alton Board of Trade v. C. & A. R. R. Co.*, and *Fourth Section Application No. 1952 of the L. & N. R. R. Co.*, 28 I. C. C., 589, to the effect that a rate of \$45 per car from East St. Louis to Owensboro, a distance of 204 miles, does not bear a proper relation to the rate of 15 cents per 100 pounds, minimum weight 20,000 pounds, via the short line to Louisville. The order of the Commission in the original case is not changed in this regard.
2. That the rate of \$32 per car from Chicago to Owensboro should be changed to 18 cents per 100 pounds, minimum 20,000 pounds, plus \$2 per car bridge toll, which is the fifth-class rate between these points.

Hines & Norman for complainants.

A. P. Humburg for Illinois Central Railroad Company.

R. A. Miller and *J. R. Skillman* for Louisville, Henderson & St. Louis Railway Company.

N. W. Proctor and *E. H. Dulaney* for Louisville & Nashville Railroad Company.

Wm. W. Collin, jr., for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and Chicago & Eastern Illinois Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

MEYER, *Commissioner*:

On May 27, 1912, the Rock Spring Distilling Company (a corporation), Milton Hamilton & Company, and the Owensboro Cattle Company (copartnerships), located on the outskirts of Owensboro, Ky., filed a complaint with the Commission in which they alleged that the rates on feeder and fat cattle between Owensboro and Kansas City, Mo., East St. Louis, Ill., and Chicago, Ill., were unreasonable and

discriminatory as compared with the rates between the three last-mentioned points and Evansville, Ind., Cincinnati, Ohio, and Louisville, Ky. The rate on fat cattle from Owensboro to New York City was also attacked as being unreasonable and unjustly discriminatory as compared with the rates from Cincinnati and Louisville to that point. The prayer of the complaint was for the removal of the alleged discriminations and reparation on specific shipments in the amount of the difference between the rate in effect and the rate found reasonable by the Commission.

A hearing of the complaint was had and the case submitted to the Commission without briefs and oral arguments. On May 6, 1913, the Commission rendered its decision in the matter and entered an order condemning the rates under attack from East St. Louis and Chicago to Owensboro, and prescribing reasonable maximum rates for a period of not less than two years after July 15, 1913; 27 I. C. C., 54. The rates so prescribed were as follows: From East St. Louis, Ill., to Owensboro, 15 cents per 100 pounds, with a minimum carload weight of 20,000 pounds; from Chicago, Ill., to Owensboro, \$32 per carload. All the carriers which handle traffic between Owensboro and New York City were not made parties defendant to the complaint, and for this reason no order with respect to the rate to New York was entered. The Commission, however, stated that in its judgment the rate from Owensboro to New York City should not exceed the rate contemporaneously in effect from Evansville to New York City. No reparation was awarded.

The defendants filed a petition for rehearing, which was granted, pending which they published and put into effect the rates prescribed by the Commission.

The carrier mainly interested in this proceeding is the Louisville, Henderson & St. Louis Railway. Its track is situated south of the Ohio River, and for some distance follows the course of the river closely. Its main line extends from Strawberry, Ky., on the east, to Henderson, Ky., on the west, a distance of 138 miles. It reaches Louisville on the east and Evansville on the west by virtue of trackage rights over the Louisville & Nashville Railroad. It also operates a branch line which extends from Irvington, Ky., on its main line, in a southwesterly direction to Fordsville, Ky., a distance of about 42 miles.

Owensboro, the city in which complainants are located, is on the main line of the Louisville, Henderson & St. Louis Railway, a distance of 42 miles east of Evansville and 114 miles west of Louisville: The city is served by three carriers—the Louisville, Henderson & St. Louis Railway, the Illinois Central Railroad, and the Louisville & Nashville Railroad. From East St. Louis the last two mentioned carriers reach Owensboro by means of branch lines. The short line

between East St. Louis and Owensboro is via the Louisville & Nashville from East St. Louis to Evansville, and the Louisville, Henderson & St. Louis Railway from Evansville to Owensboro, a total distance of 204 miles. Via the line of the Louisville & Nashville the distance from East St. Louis to Owensboro is 364 miles, and by the Illinois Central 354 miles. It will thus be seen that the only feasible route between East St. Louis and Owensboro is via the Louisville & Nashville in connection with the Louisville, Henderson & St. Louis Railway. There is no bridge across the Ohio River at Owensboro.

As was stated in our previous report, Owensboro is not a cattle market. The movement of cattle to and from Owensboro is incidental to the business of manufacturing whisky. The cattle are shipped into Owensboro lean and fattened with the refuse of distilleries. The movement of cattle into Owensboro is governed by the time of the opening of the distilleries and they are shipped out when the distilleries close. The markets in which the complainants purchase their lean cattle are Kansas City and Chicago. While lean cattle are not purchased at East St. Louis, the rate from this point to Owensboro is material for the reason that rates from Kansas City are made by combination on East St. Louis. When the cattle are fattened buyers for different packing companies inspect them at the distillery where sales are consummated. The complainants in this proceeding, therefore, do not pay the freight charges out of Owensboro, although it is claimed that in making bids for the fat cattle the buyers deduct freight charges to destination. Testimony on this point is somewhat contradictory. Chicago is the principal market to which the fat cattle are shipped, although of late years, it is said, some have been shipped as far east as New York.

Below is given the rates in effect before and after July 15, 1913:

From—	To Owensboro.		To Evansville.	To Louisville.
	Before July 15, 1913.	After July 15 1913.		
Chicago.....	\$0.25	\$32.00	\$0.15	\$0.15
East St. Louis.....	\$45.00	1.15	\$25.00	1.15

¹ Minimum weight, 20,000 pounds; cents per 100 pounds.

² Any size car; no minimum; dollars per carload.

³ Plus \$2 per car.

The defendant Louisville, Henderson & St. Louis Railway Company, in justification of the rates which were previously in effect, calls attention to the financial condition of its road. It points out that during the six years ending June 30, 1913, which are claimed to be fairly representative of the entire period, its operation shows a deficit of \$24,838. Previous to 1907 no depreciation was charged off.

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Since that year depreciation on equipment only has been charged to operating expenses. It is claimed that the rates in effect before this complaint was filed did not allow the company any return on the investment, neither did it enable it properly to provide for depreciation. Because of this unsatisfactory financial condition, it is argued, the Commission should allow this company to charge at least the rates which were previously in effect.

With respect to traffic from East St. Louis which moves over the Louisville & Nashville Railroad in connection with the Louisville, Henderson & St. Louis Railway, complainants contend that since the Louisville, Henderson & St. Louis Railway is owned and controlled by the Louisville & Nashville, we should look beyond the results of operation of the Louisville, Henderson & St. Louis for a correct view of the financial situation. This was denied by the defendants, who stated that there is no community of interest between the two companies. Complainants further argue that the lack of prosperity of the Louisville, Henderson & St. Louis Railway can not justify discrimination against Owensboro, or the placing of an undue burden upon the movement of cattle.

Defendants claim that the rates prescribed in our report virtually make Owensboro an Ohio River crossing when for rate-making purposes it should be treated like a point situated 42 miles south of the river. They emphasized the different conditions prevailing in the territory north of the Ohio River as compared with the territory south of the river. They argued that the Louisville, Henderson & St. Louis Railway is located in a sparsely settled territory, where the volume of traffic is light and the population small; that there is active water competition on the Ohio River between Louisville and Evansville which compels it to divide a considerable portion of the local traffic with the boat line; and that the establishment of Ohio River crossing rates at Owensboro is an undue hardship.

Numerous statistical exhibits were introduced by defendants tending to illustrate a great degree of dissimilarity in conditions south of the river as compared with the territory north of the river. These it is not necessary to discuss in this report.

The defendants also point out that the haul between points of origin and Ohio River crossings is in all instances a one-line haul, while to Owensboro it is a two-line haul. This, the carriers contend, entitles them to something in addition to the Ohio River crossing rate.

Complainants, on the other hand, point out that the haul from East St. Louis to Owensboro is chiefly north of the Ohio River; that the short-line distance from East St. Louis to Louisville is 271 miles via the Southern Railway as compared with 205 miles to Owensboro, and that this difference in distance of 66 miles is sufficient to compensate

defendants for whatever difference there may be between the accepted level of rates north and south of the river. With respect to traffic from Chicago, the distances to Louisville and Owensboro are about equal, and as only 42 miles of the entire haul to Owensboro is south of the river it is argued that this difference in the level of rates in the two territories is not sufficient to condemn the rate to Louisville as a measure of reasonableness of the rate to Owensboro.

While there is active competition on the Ohio River between the boat lines and the Louisville, Henderson & St. Louis Railway, it is claimed that for a number of reasons Owensboro does not have the benefit of this competition with respect to cattle. The rate by water is said to be higher than the rail rate on both inbound and outbound shipments. By water the shipper of inbound cattle from the points of origin named in this complaint would be obliged to unload them from the cars at Evansville and drive them to boat landings for loading. When they are unloaded from the boat at Owensboro he must drive them to the distillery pens, located on the outskirts of the city, from 2 to 4 miles from the boat landing. Fat cattle would have to be handled in the same manner. Furthermore, fat cattle can not be driven any considerable distance without shrinkage in weight, and for these reasons it is obvious that the outbound movement would not be by boat even if the rate were the same. It is clear that water competition has not depressed the rates on live stock to and from Owensboro.

The defendants depreciate our comparison of car-mile earnings for the hauls between the points of origin and Owensboro, Evansville, and Louisville. They state that the Commission has used short-line rates to Ohio River crossings, fixed by roads operating in the more competitive territory north of the river as a standard for the Owensboro rates of the Louisville, Henderson & St. Louis Railway, operating entirely south of the Ohio River. They argue that any comparison of this nature should be made between points practically the same distance from each other, in the same general territory; and that if this had been done the comparison would have developed that the car earnings to Owensboro are only slightly greater than for other roads in the same territory for equal hauls. This they illustrate by the following table:

Cattle, carload lots.

From Evansville, Ind., to—	Railroad location.	Distance.	Rate per car.	Earnings per car-mile.
		<i>Miles.</i>		<i>Cents.</i>
Hanson, Ky.....	L. & N. R. R. Co.....	43	\$16	37.2
Henshaw, Ky.....	I. C. R. R. Co.....	44	20	45.6
Owensboro, Ky.....	L. H. & St. L. Ry. Co.....	42	20	47.6

Below is another table which defendants contend indicates that Owensboro is fairly treated with respect to rates from East St. Louis when compared with other points in Kentucky situated a like distance from East St. Louis:

Cattle, carload lots.

From East St. Louis, Ill., to—	Distance.	Rate per car.	Earnings per car-mile.
	<i>Miles.</i>		<i>Cents.</i>
Owensboro, Ky.....	207	\$45.00	21.7
Hanson, Ky.....	208	42.00	20.1
Water Valley, Ky.....	210	38.00	18.0
Almo, Ky.....	206	46.75	22.7
Jordan, Ky.....	205	40.00	19.5

To show that with respect to rates from Chicago and East St. Louis Owensboro is favorably situated as compared with other distilling points in Kentucky located a similar distance from an Ohio River crossing, defendants submit the following table:

To—	Distance from Ohio River crossings.	Rate per car of 20,000 pounds.	
		From East St. Louis, Ill.	From Chicago, Ill.
	<i>Miles.</i>		
Ohio River crossings:			
Cincinnati, Ohio.....		\$30	\$30
Louisville, Ky.....		30	32
Evansville, Ind.....		25	30
Points south of river:			
Owensboro, Ky.....	42	45	50
Stanley, Ky.....	32	45	50
Early Times, Ky.....	42	47	42
Coon Hollow, Ky.....	52	47	42
Gethsemane, Ky.....	48	47	42
Athertonville, Ky.....	44	47	42
New Hope, Ky.....	50	47	42
Greenbriar, Ky.....	45	47	42
Hunters, Ky.....	36	47	40

The defendants call attention to the fact that the handling of cattle is more expensive than ordinary traffic. They say that an expensive terminal service is furnished at Owensboro which is not necessary with respect to other commodities. This service was discussed in our former report. It is also argued that loss and damage claims should be especially considered in fixing the rate. The Chicago & Eastern Illinois is said to have paid 3.9 per cent of its revenues received for the transportation of cattle in settlement of such claims during one year. The free transportation of a caretaker, unloading for feeding, and compliance with quarantine regulations are additional services not required in the handling of other freight.

The complainants point out that for many years previous to 1909 the rate on cattle from East St. Louis to Owensboro was 15 cents per 29 I. C. C.

100 pounds, the same as is in effect now by virtue of the Commission's order in this case; and that this rate voluntarily maintained for so long a period must be presumed to be not unreasonably low. The conditions affecting the rate have not changed, and the terminal expense at Owensboro is the same.

The average revenue per ton per mile for all railways in the United States on live stock for which these figures are available is 12 mills, while the average from all freight is 7.5 mills, the revenue on cattle being about 60 per cent greater than the average. For the states through which traffic moves from East St. Louis to Louisville (Indiana, Illinois, and Kentucky) the average for all freight is 6.5 mills; adding 60 per cent produces a revenue of 10.4 mills. The present rate of 15 cents affords the Southern Railway, the short line, a revenue of 11 mills per ton-mile for a haul of 271 miles. This, it is argued, is a full rate when it is borne in mind that 271 miles is more than the average haul upon which the statistics above noted are compiled. For the haul to Evansville, the Louisville & Nashville Railroad receives a per ton-mile revenue about 90 per cent greater than the average revenue from all kinds of freight, and the complainants contend that this rate should be shrunk in order to give Owensboro the benefit of the same rate.

The rate of 15 cents per 100 pounds from East St. Louis to Owensboro affords the carriers a per ton-mile revenue of 14.7 mills, which is more than double the revenue received from all kinds of freight in the territory through which the traffic moves. The rate proposed by the carrier, \$45 per car, yields a revenue of 22 mills per ton-mile, which is about 135 per cent greater than the revenue from all kinds of freight in the group of states to which Kentucky belongs.

As suggested above, the complainants point to the fact that the cattle which move to Owensboro are lean and of low grade, and are therefore entitled to lower rates than fat cattle. The rate to Louisville of 15 cents per 100 pounds contemplates the movement of fat cattle, and therefore Owensboro is fairly entitled to the benefit of this rate on its shipments of feeders. In support of this contention they refer to the decision of the Commission in *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, 663, reading as follows:

The Commission has recently held, after careful consideration, that rates in effect to the principal markets of consumption upon fat cattle should not apply to stock cattle, and that the stock-cattle rates should not exceed 75 per cent of the beef-cattle rate. *Investigation and Suspension Docket No. 55*, 23 I. C. C., 7. Since the rates prescribed in this proceeding were intended primarily to cover the movement of fat cattle to the packing house, there is no apparent reason why the above holding should not apply here. We are of the opinion that rates on stock cattle ought not to exceed 75 per cent of the rates prescribed by us for the movement of beef cattle.

The defendants state, however, that it is not customary in territory east of the Mississippi River to make rates on stock cattle on this basis. They claim it prevails in territory west of the Mississippi River, where live stock constitutes an important movement and where the carriers receive long hauls both in and out bound. The Louisville, Henderson & St. Louis Railway has only a short haul from Evansville to Owensboro, and must therefore assess a relatively higher charge. It should be borne in mind, defendants contend, that the rates asked for in the previous proceeding were based on rates to Evansville, Louisville, and Cincinnati, to which points the rates on fat and lean cattle are the same.

The rate proposed by the carriers, \$45 per car, from East St. Louis to Owensboro involves a violation of the fourth section when compared with the rate of 15 cents per 100 pounds from East St. Louis to Louisville, Owensboro being an intermediate point. The Commission has had this general situation before it in a recent case, the *Alton Board of Trade v. C. & A. R. R. Co.*, and *Fourth Section Application No. 1452 of the L. & N. R. R. Co.*, 28 I. C. C., 589, wherein we said, at page 593:

The short line from Alton to Louisville is via the Chicago, Peoria & St. Louis Railway and Southern Railway, the distance being 292 miles. From East St. Louis the Southern Railway, 271 miles, is the short-line route. Via the Louisville & Nashville and Louisville, Henderson & St. Louis Railway the distances from Alton and East St. Louis to Louisville are 340 and 319 miles, respectively. The Alton-Louisville rate was established by other lines than the Louisville & Nashville, and has been for a long time maintained. The route via the Louisville & Nashville is somewhat circuitous, but this carrier meets the rate of the Southern Railway, the short line to Louisville, in order to secure part of the traffic. Thus its maintenance of the lower rate to Louisville is brought about by competitive conditions. It would therefore seem that there is justification for carrying lower rates from Alton to Louisville than the rates concurrently applicable on like traffic to certain of the intermediate stations, but it appears that the Louisville & Nashville and its connections are carrying the lower rates to Louisville for a haul 340 miles in length, the Southern Railway and its connections have the same rates for a distance of 292 miles, while the rates to the intermediate points, Henderson and Owensboro, at distances from Alton of 106 and 226 miles, are higher. The rates to the intermediate points named do not bear that reasonable relationship to the rates to the long-distance point, as made by the short line, which they should. We are of the opinion that the rates from Alton to Henderson and Owensboro and intermediate stations west thereof should not exceed the rates concurrently applicable from the same point of origin to Louisville, Ky.

The finding of the Commission in the case just noted we think applies with equal force to the rates on cattle between East St. Louis and Owensboro. The short-line distance is 271 miles via the Southern Railway, for which it receives 15 cents per 100 pounds. Via the Louisville & Nashville and the Louisville, Henderson & St. Louis the distance is 319 miles. The distance from East St. Louis to Owens-

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boro is 204 miles, for which the carriers propose to charge \$45 per car. We do not think that this rate for a distance of 204 miles bears a proper relation to the rate of 15 cents for the haul of the short line of 271 miles. Our order of July 15, 1913, can, therefore, not be changed with regard to the rate from East St. Louis.

The attention of the Commission was called to an apparent error in prescribing a rate of \$32 per car from Chicago, Ill., to Owensboro, as compared with a rate of 15 cents plus \$2 per car, to Louisville. It will be seen that on a car of 26,000 pounds, for instance, the charge to Owensboro would be \$32 for a distance of 329 miles via two lines, while to Louisville via one line the charge on the same car would be \$41 for a distance of 306 miles. This error resulted from misunderstanding regarding the rates in effect at the time the order was made.

The complainants believe they are entitled to the Louisville rate from Chicago, 15 cents per 100 pounds plus \$2 per car, because the distance to Owensboro is practically the same as to Louisville and the cattle which move to Owensboro are feeders.

Effective November 12, 1904, the rate on cattle from Chicago to Owensboro was 18 cents. Live stock is not classified in official classification, but reference is made therein to the tariffs of individual carriers for rates. The Chicago & Eastern Illinois Railroad Company on that date published a class and commodity tariff applicable to traffic from Chicago to Owensboro. This tariff was governed by the official classification. The exceptions to the official classification on that date provided for the fifth-class rate, 18 cents, on cattle between these points. This 18-cent rate was continuously in effect until January 13, 1908, when the Chicago & Eastern Illinois canceled its tariff and referred for rates to a tariff (I. C. C. A-3) published by agent Fulton. This agency tariff carried a rate of 18 cents, fifth class, between Chicago and Owensboro, but was governed only by the official classification, no exception sheet having been filed. Therefore the class rate was not available to shipments of cattle. The rate in effect between January 13, 1908, and May 5, 1909, was made by combination on Evansville, 15 cents from Chicago to Evansville, plus \$20 per car from Evansville to Owensboro. On May 5, 1909, agent Fulton published a specific commodity rate of 25 cents per 100 pounds between these points, which rate was in effect until the effective date of our order, July 15, 1913.

The complainants argue that it is unusual to maintain a commodity rate that is higher than the class rate for the same traffic, but the defendants contend that in many instances commodity rates are higher. In connection with this it is to be observed that the very purpose of a commodity rate is to remove the commodity from the classification for special treatment, which could not be accorded to

it at all, or only with difficulty, under the classification. The classification generally imposes the highest rate which a particular commodity should bear under normal conditions. A commodity rate which is higher than the class rate is an abnormality which on its face requires special justification. We do not believe that the record in the instant case provides such a justification.

From the evidence before us in this proceeding it does not appear that any new conditions have arisen since the fifth-class rate of 18 cents was in effect on cattle between these points. A rate of 18 cents, which is 3 cents higher than the rate to the Ohio River crossings, is ample compensation for the two-line haul involved, especially when the difference in distance is only 23 miles and the class of cattle shipped to Owensboro is of a lower grade than those shipped under the 15-cent rate to Evansville and Louisville. In addition to the 18-cent rate, carriers will be allowed to charge \$2 for bridge toll. Our order previously entered in this proceeding will be modified in accordance with the findings herein.

We appreciate the financial difficulties of the Louisville, Henderson & St. Louis Railway. If it does not now secure fair divisions of joint through rates from other carriers, it can appeal to this Commission for relief. However, it must be apparent that the need of revenue of one of a number of participating carriers can not be taken as the sole measure of the rates to be established as reasonable maximum rates on traffic to and from points on its line.

Some inquiry was made by the Commission with respect to the contemporaneous existence on the same railway of flat per-car rates on cattle and rates expressed in cents per 100 pounds. No answer is found in the record. When all shippers get the use of cars of the same size the dollars-per-car system of quoting rates is obviously not unjustly discriminatory. It must be equally obvious that discrimination must result when the loading capacities of the respective cars differ. A system which provides reasonable minimum weights for different sizes of cars and expresses the rate in cents per 100 pounds would generally appear to be preferable over a flat-rate dollars-per-car system, irrespective of the size of the car. This feature may advantageously engage the attention of the carriers.

No. 5811.

SOUTHWESTERN MISSOURI MILLERS' CLUB

v.

**ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.**

Submitted November 15, 1913. Decided January 6, 1914.

1. Rates on grain and grain products from mills in southwestern Missouri, northwestern Arkansas, northeastern Oklahoma, and southeastern Kansas to Memphis, Tenn., found not unreasonable in themselves nor unjustly discriminatory.
2. Proportional rate on wheat from Kansas City, Mo., to Memphis, Tenn., does not unjustly discriminate against the territory in question.
3. Contention of complainant in its brief that rates on grain and grain products from the territory in question to points in the southeast are unduly prejudicial as compared with rates to the southeast from other points located upon all sides was not properly presented in the record and will not be considered in this proceeding.

W. H. Marshall for complainant.

Fred. H. Wood for St. Louis & San Francisco Railroad Company.

F. G. Wright and *H. G. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The members of the complainant association operate mills in the southwestern part of Missouri, the northwestern corner of Arkansas, the northeastern corner of Oklahoma, and the southeastern corner of Kansas. It is not clear from the complaint or the record just what the ground of complaint is. Apparently the territory of consumption to which this proceeding is directed lies east of the Mississippi and south of the Potomac and Ohio rivers, being generally known as the southeast. The allegation seems to be that rates from the complaining territory to the southeast are too high as compared with other points located upon all sides.

Reference may first be made to the alleged discrimination in favor of territory to the east; that is, in favor of mills in the southeastern part of the state of Missouri. It appears that rates from the complaining territory to the southeast are made by combination upon the Memphis gateway. It further appears that rates from the complaining territory and from southeastern Missouri to Memphis are fairly adjusted one to another, but the complainant asserts that rates to the southeast from southeastern Missouri territory are not

made by combination on Memphis, but are through rates less than the combination, and herein it is alleged there is discrimination.

This discrimination is not mentioned in the complaint, nor is it distinctly referred to in the record. Even in the briefs it is only brought out with clearness in the reply of the complainant. In our opinion, this issue has not been properly presented and it will not be considered in this proceeding.

The proportional rate on wheat from Kansas City to Memphis is 14 cents, applicable to grain which has reached Kansas City by rail. The distance from Kansas City to Memphis is much greater than the average distance from the territory in question and the traffic passes through a portion of that territory en route. This rate from Kansas City is frequently referred to by the complainant in its testimony and in its brief and argument as though its maintenance were an unjust discrimination against the complainant.

No such allegation is found in the complaint, nor could it successfully be claimed that the mere fact of the maintenance of this lower rate established such discrimination. As already noted, the rate itself is a proportional rate, only applicable to traffic which has reached Kansas City from some more distant point by rail. It is in essence a division of a through rate, and the Commission has several times held that undue discrimination does not under such circumstances of necessity arise where a higher rate is maintained from an intermediate point. *Baltimore Chamber of Commerce v. B. & O. R. R. Co.*, 22 I. C. C., 596; *Southern Illinois Millers' Assn. v. L. & N. R. R. Co.*, 23 I. C. C., 672.

The discrimination which the complaint expressly sets forth, and to which the attention of the Commission has been mainly directed, is alleged to arise out of the maintenance of rates from the complaining territory to Memphis, which are unduly high as compared with rates from territory to the west, north, and northwest. It is alleged that rates on grain and grain products from the territory in which the members of the complaining association operate are both unreasonable in themselves and unduly high in comparison with rates from surrounding territory, and the complaint prays that rates from the complaining territory be reduced 4 cents per 100 pounds. This is the substantial question presented for determination.

We may first inquire whether the rates are unreasonable in and of themselves. The territory in question embraces points served both by the St. Louis & San Francisco Railroad and the Missouri Pacific system. Distances from points in this territory to Memphis appear to be somewhat less by the St. Louis & San Francisco than by the Missouri Pacific. According to one exhibit of the complainant, the average distance by the St. Louis & San Francisco is slightly in

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excess of 350 miles. The rates upon wheat are usually 17 and 18 cents; in one or two cases slightly higher. Rates on corn run from 15 to 17 cents.

In *Southwestern Missouri Millers' Club v. M., K. & T. Ry. Co.*, 22 I. C. C., 422, this same territory, upon the petition of this same complainant, was before us. In that case there was in effect at the time of the filing of the complaint a rate of 23 cents to Little Rock, which applied as a blanket over territory from Kansas City, upon the north, to the southern edge of the territory here involved. There the complaining territory was designated as the "Joplin group," but it was substantially the same territory which is now before us. The average distance from the Joplin group to Little Rock was found to be about 350 miles, almost exactly identical with the average distance by the line of the St. Louis & San Francisco to Memphis. In that case the complainant claimed that the rate to Little Rock from the Joplin territory ought not to exceed 18 cents per 100 pounds on wheat. The Commission found that the existing rate of 23 cents was unlawful, both because it was unreasonable in and of itself and because it was discriminatory as compared with rates from the northern part of the group. A rate of $20\frac{1}{2}$ cents upon wheat and $17\frac{1}{2}$ cents upon corn was established.

It will be seen, therefore, that it was there held that $20\frac{1}{2}$ cents was a reasonable rate to be charged for the transportation of wheat from this territory to Little Rock, an average distance of 350 miles. There is no testimony before us to show that the cost of transportation from this same territory to Memphis is less than to Little Rock, nor are any conditions pointed out which would justify the establishment of a lower rate from this territory to Memphis than we established to Little Rock. Now, at the present time the rate from this territory to Memphis seldom exceeds 18 cents per 100 pounds. If we are to adhere to our decision in that case, and no reason is suggested for departing from it, we must hold that the rates now in effect from this complaining territory to Memphis are reasonable in and of themselves.

Are those rates discriminatory as compared with rates from territory more distant? In the previous case we held that there was such discrimination. In that case, however, there was a single blanket rate extending from the southern edge of Joplin territory to Kansas City and north, and that rate was 23 cents per 100 pounds. In this case there is no blanket rate, but the rate grades slightly higher to more distant points, reaching 18 cents immediately south of Kansas City upon the direct line, and 19 and 20 cents at more distant points to the west. This case, then, differs materially from that: First, because the rates now in existence do to some

extent acknowledge the effect of distance; and, second and mainly, because rates both from the nearer and more distant points are distinctly lower than in that case. An examination of that opinion will show that, while the Commission held that the blanket was too wide, its decision went mainly upon the ground that rates from the Joplin group, having reference to the length of the haul, were excessive in themselves.

While if this Commission were establishing a scale of mileage rates from this territory a somewhat greater difference would probably be made than now exists on account of distance, still on the whole we do not feel that this complaining territory is badly treated under the present adjustment of rates so far as its transportation charges to Memphis and territory served through that gateway are concerned, and the charge of discrimination is not sustained.

We hold, therefore, that rates from this complaining territory to Memphis are not unreasonable in themselves, and that no undue discrimination has been established. This applies, it should be noted, to the territory considered as a whole, and not to particular rates which have not been called to our attention and which are not considered.

There is some suggestion in the record that rates from this territory to Memphis are too high as compared with those from southern Illinois, but this point is not clearly presented by the complaint nor much elaborated in testimony, and if it were, the conditions of competition are so utterly dissimilar that discrimination could hardly be affirmed.

The complaint will be dismissed.

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No. 4330.
NEW ORLEANS BOARD OF TRADE, LIMITED,
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted May 23, 1913. Decided January 5, 1914.

1. Upon failure of proof of damage as a result of discrimination found by the Commission in *New Orleans Board of Trade v. I. C. R. R. Co.*, 23 I. C. C., 465, claim for reparation dismissed.
2. Nothing in the act to regulate commerce warrants a presumption that a complainant has been damaged by some violation of the act.
3. Mere proof of specific shipments made and the amount for which reparation is sought does not make out a prima facie case when a discrimination in rate or service is the basis of complaint.
4. The fact of damage as well as the amount of damages claimed must be established and that by such evidentiary facts as would be required to sustain such a recovery before a court of law.

John A. Smith for complainant.

D. H. B. Chaffee for interveners.

Chas. J. Rixey, jr., for Illinois Central Railroad Company.

R. Walton Moore, Frank W. Gwathmey, M. Carter Hall for Louisville & Nashville Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, Commissioner:

For the transportation of unmanufactured tobacco from Henderson and Owensboro, Ky., to the port of New Orleans, La., for export, the defendants charged 21.5 cents per 100 pounds on traffic destined to Liverpool, 22 cents per 100 pounds when destined to Bristol, and 25 cents per 100 pounds when destined to other European points. The New Orleans Board of Trade, on behalf of ocean steamship lines entering the port of New Orleans, La., made complaint of these rates as unjustly discriminatory under sections 2 and 3 of the act to regulate commerce. Gallaher, Limited, a Kentucky corporation; Nosworthy & Argue, a partnership; and R. E. O'Flynn, a merchant, all engaged in the tobacco business at Henderson, Ky., intervened in behalf of complainant. It appears that certain competitors of the interveners ship to Liverpool and Bristol, whereas interveners ship to Belfast or Dublin. This Commission found that the rates were unduly preferential and prejudicial, in violation of section 3 of the act to

regulate commerce; *New Orleans Board of Trade v. I. C. R. R. Co.*, 23, I. C. C., 465, decided May 18, 1912.

The interveners asked for reparation upon shipments which had moved from Owensboro and Henderson, Ky., to foreign ports upon which the export rate to New Orleans of 25 cents per 100 pounds had been paid, but the Commission found on the original hearing of this case that there was no evidence then in the record sufficiently definite to warrant a finding that the interveners had been actually damaged. Decision of the question of reparation was reserved and interveners were allowed to offer such further testimony as they deemed proper in support of their allegation of damage.

On the second hearing, with which we are now concerned, the interveners contented themselves with offering in proof certain exhibits which had heretofore been made a part of the former record and there rested their case, taking the position that as a matter of law they are entitled to recover the difference between the amount they did pay at the higher rate and the amount they would have paid at the lower rate, and contend they are entitled to recover $3\frac{1}{2}$ cents per 100 pounds on all shipments made. We have been cited to no authority sustaining this contention.

There is nothing in the act to regulate commerce from which a presumption of damage can be inferred and it has never been so held.

The wording of the act is as follows:

SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act.

As said in *Parsons v. C. & N. W. Ry. Co.*, 167 U. S., 447, 460, and quoted in *Pa. R. R. Co. v. International Coal Co.*, 230 U. S., 200, in construing this section:

Before any party can recover under the act he must show not merely the wrong of the carrier, but that that wrong has in fact operated to his injury.

And in *Pa. R. R. Co. v. International Coal Co.*, *supra*, it is said:

Congress had not then and has not since given any indication of an intent that persons not injured might, nevertheless, recover what, though called damages, would really be a penalty, in addition to the penalty payable to the government.

Proof of the damages resulting from the wrongful act of the carrier must be by such evidentiary facts as would be required to sustain such a recovery before a court of law. *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, 51.

Mere proof of specific shipments made and the freight paid and the amount for which reparation is sought does not make out a

prima facie case. Something more is necessary. The complainant must show how the discrimination found to exist affected him to his damage. In other words, he must establish the *fact* of his damage as well as the *amount* of damages he claims.

In *Pa. R. R. Co. v. International Coal Co.*, *supra*, it is held that a mere finding of unjust discrimination without proof of actual pecuniary loss suffered will not authorize a finding for reparation.

It appears from the record that the interveners contracted with the ocean steamship lines for the shipment of their tobacco under yearly contracts, as did also their competitors, and it appears further that for the period for which reparation is claimed they were under contract to pay a through rate of 55 cents per 100 pounds from Kentucky points through New Orleans to Dublin and Belfast, and that their competitors were under contract also to pay the same rate on shipments from Kentucky through New Orleans to Liverpool. Under the terms of these contracts the steamship lines absorbed the charge for the railroad transportation from Kentucky points to the port at New Orleans. It does not appear, therefore, that interveners would have paid any less for the through transportation of their tobacco if the rates complained of had been identical and it does not appear that their competitors had any advantage, because they both paid the same through rate to transport their tobacco to England. The rates complained of affected export shipments of tobacco only, and it was not contended that the published tariff rate charged interveners was unreasonable.

After full consideration of the record and under all the circumstances, we are unable to find that interveners have been damaged, and claim for reparation will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 325.
RATES ON GRAIN AND GRAIN PRODUCTS TO TEXARKANA,
ARK.

Submitted December 4, 1913. Decided January 12, 1914.

Following the attempted cancellation of proportional rates on grain and grain products from certain interior milling points in southern Illinois to Texas points, respondents herein sought to withdraw proportional rates from interior milling points in southern Illinois and southeastern Missouri to Texarkana, Ark. The proportional rates to Texas having been restored and the present record suggesting no reason for independent treatment of the rates to Texarkana or for different action than was taken in the former case; *Held*, That respondents have not borne the burden of proof and that the suspended schedule should be canceled.

H. G. Herbel for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

W. O. Bartholomew for Southern Illinois Millers' Association.

REPORT OF THE COMMISSION.

CLARK, Chairman:

This proceeding concerns the proposed withdrawal by the St. Louis, Iron Mountain & Southern Railway and its connections of proportional rates on grain and grain products from certain interior milling points in southern Illinois and southeastern Missouri to Texarkana, Ark., and the application in lieu thereof of flat rates, principally joint rates, from the milling points, which in most instances exceed the proportional rates by approximately 7 cents per 100 pounds. Protests were filed by many of the millers at the Illinois points, and as a result Missouri Pacific-St. Louis, Iron Mountain & Southern supplement 1 to tariff I. C. C. No. A-1269, by which it was sought to accomplish the withdrawal, was suspended by the Commission until February 12, 1914.

The history of the establishment of proportional rates from St. Louis, Kansas City, and other river crossings and primary markets, their gradual extension to interior milling points, and the motives prompting the attempts to withdraw the rates from the interior milling points are set forth in our report in *Proportional Rates on Grain Products to Texas*, 27 I. C. C., 282, and as the instant case is essentially a companion of or supplement to that case, repetition here is unnecessary.

In the former case the carriers sought to cancel out proportional rates to destinations in Texas from practically the same milling

points here under discussion, and respondents assert that, as Texarkana, due to its location on the Texas border, bears in rate construction a relation to the Texas group, and is the only Arkansas point to which proportional rates from these milling points are carried, action with respect to the Texarkana rates should and would have been taken contemporaneously with the effort to withdraw the Texas rates but for the fact that they were carried in a separate tariff and were at the time overlooked.

From East St. Louis and Cairo, Ill., respectively, to Texarkana, the rates on both wheat and flour are 20 cents and 18 cents per 100 pounds, and it was shown that the flat joint rates which would apply in the event of the withdrawal of the proportional rates would in some cases exceed the sums of the intermediate rates via East St. Louis or Cairo. As to all such instances respondents purpose to make necessary corrections, similar corrections in the Texas rates having been suggested and made in the disposition of *Proportional Rates on Grain Products to Texas, supra*.

Protestants allege resulting violations of section 4 of the act, but it was pointed out by respondents that the comparisons made were of flat rates with proportional rates. Nothing to the contrary appearing, and the Commission having in its Conference Ruling No. 304 expressed the view that in determining fourth section violations rates of the same character should be compared with one another and that proportional rates should not be compared with local rates, this contention of the protestants is not sustained.

Of the milling points under consideration, 13 are on the rails of the St. Louis, Iron Mountain & Southern, 11 on the Illinois Central, 3 on the Illinois Southern, and 2 each on the Wabash, Chester & Western and the Chester, Perryville & Ste. Genevieve railroads. The St. Louis, Iron Mountain & Southern is the only one of these roads granting at the milling points involved transit privileges on business to Texarkana. This road has for years permitted milling in transit at any of its points without additional charge, and mills on that line intermediate between East St. Louis and Texarkana—and nearly all of them are so situated—can draw grain from East St. Louis, mill and reship on the proportional rate of 20 cents. Mills not intermediate have access to any markets or grain-producing points beyond them on basis of the through rates from such markets or producing points. If the proportional rates from interior milling points are withdrawn, the milling-in-transit privilege will still be available at St. Louis, Iron Mountain & Southern stations, although on basis of increased transportation charges to both the intermediate mills and those that are not intermediate, except that in the case of grain from East St. Louis milled at an intermediate station the benefit of the 20-cent proportional rate from East St. Louis will be obtainable.

In *Proportional Rates on Grain Products to Texas, supra*, we stated that cancellation of proportional rates from interior milling points would give decided advantage to mills at St. Louis and other rate-breaking points and that so long as carriers continued a system of rates giving such advantage it was their lawful duty to provide by milling in transit or otherwise a substantial rate equality for the country miller. Failure of the carriers to so provide led to the reestablishment in September, 1913, of the former proportional rates to Texas and these are still in effect.

The situation presented here is not different from that found in the former case. The Texarkana adjustment is clearly substantially like that to Texas points and no reasons have been advanced which would warrant different action in the instant case than was taken in the former case.

Our conclusion is that respondents have not borne the burden of proof cast upon them by law. The schedule now under suspension should be canceled, and permission is hereby granted to do this on not less than three days' notice. If such action is not taken by February 10 a further suspension order will be issued and this will be followed by an order fixing the future rates.

29 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 283.
LUMBER RATES THROUGH OHIO RIVER CROSSINGS.
LUMBER RATES FROM CAIRO, THEBES, ILL., AND
OTHER POINTS TO STATIONS IN ILLINOIS AND
FORT MADISON, IOWA.

Submitted November 17, 1913. Decided January 5, 1914.

Cancellation of through routes involving a three-line haul in favor of other two-line routes between the same points under the same rates justified, and upon the facts shown of record and described in the report found not to be prejudicial to shippers.

E. E. Eversull for protestant.

A. G. Sheer for Atchison, Topeka & Santa Fe Railway Company.

F. G. Wright for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The tariff under consideration in this proceeding provides for the cancellation of routes for the movement of lumber through Cairo and Thebes, by way of the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern through the St. Louis or East St. Louis gateway, to destinations on the Santa Fe in the state of Illinois, including Fort Madison, in Iowa. If the tariff is permitted to become effective there will still remain available routes to these Santa Fe local points through the Cairo and Thebes gateways by way of the Cleveland, Cincinnati, Chicago & St. Louis, the Illinois Central, and the Chicago & Eastern Illinois. The latter routes involve a two-line haul north of the Ohio River. On the other hand, the rails of the Cotton Belt and the Iron Mountain end at St. Louis and East St. Louis, and as the Santa Fe does not reach either of these points a three-line haul is required north of the Ohio River crossings in order to reach local markets on its rails. The Santa Fe contends that the divisions of the rates where three lines are involved does not give it a sufficiently remunerative proportion as the delivering line, and therefore it proposes in the tariff under suspension to cancel those routes in favor of the ones involving only a two-line haul. It is claimed that the divisions accorded to the Santa Fe under the St. Louis routing are in some instances below the actual cost of the service, especially in the case of shipments consigned to competitive points and requiring the absorption of terminal charges in order to effect delivery.

The rates involved in the proceeding apply on lumber originating in the south and southwest; the through charges are based on the rates to the Ohio River crossings plus the rates from the crossings to destination. The reasonableness of the through charges, or of the factors composing the through charges, is not challenged. Shipments from the producing districts of the south to destinations on

the Santa Fe in Illinois will continue to move under the same rates as heretofore, and through routes are provided for the transportation north of the Ohio River. Through rates are in effect from Louisiana and Arkansas stations to Cairo and Thebes by way both of the Iron Mountain and the Cotton Belt, and these are the factors applying south of the Ohio River in making through rates to all destinations on the Santa Fe in Illinois. The rates north of Cairo and Thebes are the same by all routes.

The protestant is a lumber company operating mills located on the line of the Louisiana & Arkansas Railway in Arkansas. This carrier connects with the Iron Mountain at Hope, Ark., and Georgetown, La., and with the Cotton Belt at Stamps, Ark. Its protest grows out of a fear that the supply of empty equipment will be seriously diminished if the route through the St. Louis gateway be eliminated. As stated by a witness for the protestant, the cancellation of the route through the St. Louis gateway forces the protestant to secure its empty equipment from the Illinois Central or Big Four at Cairo or the Chicago & Eastern Illinois at Thebes. No testimony was submitted at the hearing to substantiate this conclusion, and it does not appear to us to be well founded. Section 1 of the act clearly provides that it is the duty of every common carrier to furnish all necessary facilities for the transportation of freight, including cars. By this provision the Louisiana & Arkansas Railway is obligated to supply industries upon its rails with the cars required. But the protestant maintains that the Louisiana & Arkansas can not be relied upon to furnish equipment, as that company owns but 400 cars, not one of which has been on its line in three months. The witness, however, stated that he was not an employee of the Louisiana & Arkansas Railway and had nothing whatever to do with its operation. His testimony is not confirmed by reference to the official register of September, 1913, as in that publication the Louisiana & Arkansas is credited with owning 1,109 freight cars, and it is improbable that all these cars were in service on foreign lines for so long a period.

The duty of furnishing cars, however, does not rest solely with the Louisiana & Arkansas, as we held in *Huerfano Coal Co. v. C. & S. E. R. R. Co.*, 28 I. C. C., 502. The obligation to furnish cars for transportation over through routes composed of two or more carriers is a joint obligation and rests upon all carriers participating in the route; and we can not assume that all the carriers composing the through routes will fail in their duty to furnish equipment.

Upon a full consideration of the whole record it appears that the closing of the routes through St. Louis and East St. Louis to shipments of lumber from Cairo and Thebes to points of destination on the Santa Fe in Illinois, including Fort Madison, Iowa, will not operate to the disadvantage of any shipper. It follows, therefore, that our order of suspension must be vacated, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 291.
EMIGRANT MOVABLES TO SOUTH DAKOTA.

Submitted November 15, 1913. Decided January 5, 1914.

Proposed increased rates on emigrant movables from Chicago, Ill., St. Paul, Minn., and other points, to points in South Dakota, held not to be unreasonable, but this case held open to permit carriers to remove certain discrimination found to exist in connection with rates on emigrant movables to eastern South Dakota and eastern Nebraska.

J. B. Sheean and W. D. Burr for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

C. C. Wright and R. H. Widdecombe for Chicago & North Western Railway Company.

Joe Kirby for South Dakota Central Railway Company.

D. L. Kelley, Royal C. Johnson, and P. W. Dougherty for South Dakota Board of Railroad Commissioners.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The tariff under suspension in this proceeding is designated as Chicago, St. Paul, Minneapolis & Omaha Railway supplement No. 35 to I. C. C. No. 3422, filed to become effective August 1, 1913, and suspended until May 29, 1914. The suspended tariff canceled the commodity rate on emigrant movables shown in the original tariff and provided application of class-B rates. The effect of this change would be to increase the rates on emigrant movables from Chicago, St. Paul, and other points to points in South Dakota located on the South Dakota Central Railway. This increase in rates is protested against as both unreasonable and discriminatory.

The South Dakota Central Railway operates a railroad located wholly within the eastern portion of South Dakota, with its southern terminal at Sioux Falls and its northern terminal at Watertown. This road has track connections with several interstate carriers, and each of these, with the exception of the Chicago, St. Paul, Minneapolis & Omaha Railroad, made this same change in their tariffs, and not being protested, the increase in rates thereunder became effective April 1, 1913. The protestant here explains that at the time these changes were made it had no traffic department and knew nothing of the increase until it had gone into effect. This general increase extends to all points in South Dakota east of the Missouri River served by the several carriers.

The table following furnishes a comparison of the present rates and those proposed in the suspended tariff, with the earnings.

	Short-line distance.	Present rate.		Proposed rate.		Present rate.		Proposed rate.	
		Per 100 pounds.	Per ton-mile.	Per 100 pounds.	Per ton-mile.	Per car.	Per car-mile.	Per car.	Per car-mile.
<i>Arlington, S. Dak., from—</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>				
St. Paul, Minn.....	253	15	1.19	15.0	1.19	\$30.00	11.9	\$30.00	11.9
Duluth, Minn.....	361	29	1.61	27.0	1.52	55.00	16.1	54.00	15.2
Chicago, Ill.....	591	20	0.68	29.0	1.13	40.00	6.8	55.00	9.3
Omaha, Nebr.....	311	25	1.61	29.9	1.92	50.00	16.1	59.80	19.2
Kansas City, Mo.....	499	30	1.32	30.0	1.32	60.00	13.2	60.00	13.2
St. Louis, Mo.....	690	30	0.87	32.5	0.94	60.00	8.7	65.00	9.4
<i>Westworth, S. Dak. from—</i>									
St. Paul, Minn.....	273	15	1.10	15.0	1.10	30.00	11.0	30.00	11.0
Duluth, Minn.....	379	29	1.53	27.0	1.42	55.00	15.3	54.00	14.2
Chicago, Ill.....	551	20	0.69	29.0	1.00	40.00	6.9	55.00	10.0
Omaha, Nebr.....	281	25	1.78	25.9	1.85	50.00	17.8	61.80	18.5
Kansas City, Mo.....	469	30	1.28	30.0	1.28	60.00	12.8	60.00	12.8
St. Louis, Mo.....	690	30	0.91	32.5	0.98	60.00	9.1	65.00	9.8

The present rates have been in effect for 20 years or more, and it is contended by the carrier that they were made on a very low basis to induce immigration and with a view of developing the country, when it was new and unsettled.

The suspended tariff applies to territory included in six counties, as follows: Codington, Hamlin, Kingsbury, Brookings, Lake, and Minnehaha. It appears from the record that these counties have developed in a marked degree. Of the 2,589,920 acres of land comprising the six counties affected, 2,502,607 acres are in farms, and of this, 2,230,335 acres, or 83 per cent, of all the land in these counties are improved farm lands. The value of the land in these counties increased from an average of \$19.87 per acre, in 1900, to \$56.88 per acre, in 1910, while the average value of all lands in South Dakota increased from \$9.92 per acre, in 1900, to \$34.69, in 1910.

The average population per square mile in 1910 for the state of South Dakota was 7.6, and the average for these counties was 21. The average for the portion of the state west of the Missouri River was 3.4, while that east of the Missouri River was 12.6.

It appears that for the period from January 1 to September 1, 1913, before and after the rates were increased by the South Dakota lines, the Chicago, St. Paul, Minneapolis & Omaha Railway did not receive from or deliver to the South Dakota Central Railway a single car of emigrant movables; and that the Chicago & North Western did not deliver a single car of emigrant movables to the South Dakota Central Railway, but received one car from the South Dakota Central Railway destined to another point on its line in the state. During the same period the Chicago, St. Paul, Minneapolis & Omaha Railway handled to stations on its line in the state of South Dakota 110 carloads, and during that time it handled from stations on its line 114 carloads. The Chicago & North Western Railway during the same period handled 465 carloads of emigrant movables to stations on its line in South Dakota, and 587 carloads from stations on its line.

It appears from the record that in making the increases as proposed in the suspended tariff the carrier failed to carry out its original idea, viz, to maintain rates not to exceed 32½ cents from St. Louis, 30 cents from Kansas City and Omaha, 27 cents from Duluth, and 15 cents from St. Paul, except that the rate from St. Paul to Level siding should not exceed 18 cents; and it further appears that the carrier proposes to establish rates based upon class B, but not to exceed these figures, if the suspension is canceled.

From all the circumstances presented in this record, we can not say that the proposed rates are in and of themselves unreasonable.

It appears that the policy of the carriers is to maintain lower rates to the undeveloped sections of South Dakota and Nebraska, and that the increase in rates only affects the sections of these states which have developed most, and the states of Iowa and Minnesota, and further, that these increases have been established in such a way as not to bring about any unreasonable discrimination, with the exception, however, of the relation between eastern Nebraska and eastern South Dakota. It does appear from the record that under substantially similar circumstances there is an undue preference in favor of eastern Nebraska points and an undue discrimination against eastern South Dakota points.

This discrimination should be promptly removed, but since many points are involved it is our opinion that the readjustment should in the first instance be left to the carrier. We do not wish to be understood by this as indicating that the rates to eastern Nebraska points should be increased to the rates proposed to the eastern South Dakota points, but what we do mean is that there shall be such a readjustment of these rates as not to work out an undue preference to any eastern Nebraska point over an eastern South Dakota point, distance and all other transportation conditions considered. The carriers will be expected, however, to establish rates to eastern South Dakota points involved here not to exceed those proposed as set forth hereinabove.

Accordingly the respondents will be expected to establish on or before March 15, 1914, rates from the different gateways to eastern South Dakota points located on the South Dakota Central Railway, which shall conform to the views herein expressed. If this is not done by the date indicated, the protestant may call our attention to the matter, when an appropriate order will be issued.

When tariffs are filed which comply with the views expressed herein the order of suspension will be vacated.

INVESTIGATION AND SUSPENSION DOCKET No. 272.
CONDENSED MILK RATES BETWEEN POINTS IN
ILLINOIS AND WISCONSIN.

Submitted September 19, 1913. Decided January 5, 1914.

Suspended tariff publishing rates on condensed milk between points in Illinois and Wisconsin should be so amended as to include condensed milk in barrels, half barrels, or kegs under the commodity rate on milk in cans, boxed.

Fred C. Mansfield for protestant.

A. F. Cleveland and *Robert H. Widdicombe* for respondent.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The tariff under suspension in this proceeding is designated as Chicago & North Western Railway Company supplement No. 10 to I. C. C. No. 7319, filed to become effective June 5, 1913, and suspended until April 3, 1914.

The original tariff of which the suspended tariff is a supplement reads as follows: "Milk, condensed, and evaporated cream, c. l., minimum weight 80,000 pounds."

It appears that this item was published with the intent that the rate carried should apply to cans of condensed milk in boxes under the belief that condensed milk moved only in this way. But it further appears that condensed milk was being shipped in carload lots in 8-gallon cans, without any protection, and that to carry out the original intent of this tariff, supplement No. 10, the tariff under suspension, was published which reads as follows: "Milk, condensed or evaporated, in cans, boxed."

Under western classification, condensed milk shipped in cans without crating or boxing takes the first-class rate in less-than-carload lots. The carload requirement reads as follows:

In glass or earthenware, packed in barrels or boxes, in metal cans completely jacketed, in metal cans in barrels, boxes, or crates, or in bulk in barrels, fifth class.

There is no provision under official classification No. 40 for the transportation in carload lots of milk in cans without being boxed or crated, and this classification reads as follows:

In glass or earthenware, packed in barrels or boxes, in metal cans completely jacketed, in metal cans in barrels, boxes, or crates, or in bulk in barrels.

The Illinois classification is as follows:

Tin cans, glass or stoneware, packed in barrels, boxes, or crates; in bulk, in kits, kegs, or barrels, or in cans jacketed.

The protestant's plant is located at Johnson Creek, Wis., on the line of the Chicago & North Western Railway, and most of its shipments go into Illinois on the lines of said road. It appears that the bulk of the protestant's product is shipped in wood, barrels, half barrels, and kegs and that shipments of condensed milk so packed did not come within the commodity rate provided for in the suspended tariff and would therefore take a higher rate under the classification as above set out.

Upon a full consideration of the matters presented in this record we are of opinion that the carriers have not justified the increase proposed by this tariff. It is suggested that the tariff be amended to include milk, condensed or evaporated, in barrels, half barrels, or kegs. The carriers will be allowed until March 1, 1914, to comply with the views expressed herein; the tariff to be published upon five days' notice to the Interstate Commerce Commission and the general public as provided in section 6 of the act to regulate commerce. When this is done the order of suspension herein will be vacated.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 246.
LAKE-AND-RAIL BUTTER AND EGG RATES.

Submitted November 7, 1913. Decided January 5, 1914.

Respondents, operating boats on the great lakes between Buffalo, N. Y., and their western termini, recently issued supplements to their tariffs adding to the list of commodities not accepted by them for shipment butter, eggs, fresh meats, and live or dressed poultry; such supplements were suspended pending investigation as to the reasonableness of these prohibitions; *Held*, That the request of protestants made upon respondents to provide transportation for butter, eggs, and dressed poultry is reasonable, and that their refusal to provide such transportation in the past for such articles was unduly prejudicial and disadvantageous.

Francis W. Sullivan for Bridgman-Russell Company, of Duluth, Minn., protestants.

G. Roy Hall for Commercial Club of Duluth.

Charles E. Elmquist for Minnesota Railroad & Warehouse Commission, interveners.

Ernest S. Ballard for Western Transit Company and Mutual Transit Company.

Frederick L. Ballard for Erie & Western Transportation Company.

Gernnard Winston for Dominion Transportation Company.

H. C. Snyder for Erie Railroad lake lines.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The respondents who principally assumed the defense in this case are the Mutual Transit Company, the Western Transit Company, and the Erie & Western Transit Company (the Anchor line), which operate boats on the great lakes between Buffalo, N. Y., and Lake Superior and Lake Michigan ports. Boats of the different lines run to Duluth, Minn., Superior and Milwaukee, Wis., and Chicago, Ill., on the west, with various intermediate stops between Buffalo and the western termini. They carry freight only, except the Anchor line, which operates three steamers which also carry passengers. This latter is the only one of three lines which attempts to maintain a regular freight schedule, the arrival and departure of the boats of the other lines being regulated by the amount of business to be handled and the necessary time for the trips.

Effective April 6, 12, 14, 1913, these lake lines issued a supplement to their tariffs, adding to their "prohibited list"—that is, the list of commodities not accepted for shipment, among others butter and

eggs, fresh meats, and live or dressed poultry. The tariff provisions relating to the articles named, together with a similar provision in the tariff of the Erie Railroad lake line, were suspended by the Commission until February 4, 1914. Succeeding tariffs, issued by the Erie & Western Transportation Company have, in so far as they contained the prohibitions, been suspended, the last until April 1, 1914. The carriers affected have recently agreed to a further suspension beyond February 4, 1914, pending the decision of the Commission. The reasonableness and propriety of these prohibitions are to be determined in this proceeding.

The protestants are the Bridgman-Russell Company, of Duluth, a dealer in the commodities in question, the Commercial Club of the City of Duluth, and the Minnesota Railroad & Warehouse Commission. The Northern Cold Storage & Warehouse Company was also represented at the hearing by its manager, who testified as an expert in refrigeration. While protestants challenge the regulations as a whole, their evidence concerned only butter and eggs, and to a lesser degree, dressed poultry.

Respondents seek to justify the proposed regulation on two grounds: First, on a claim of legal right to refuse the traffic, irrespective of the reasonableness or unreasonableness of the regulation itself; second, that, apart from the question of right, the regulation is a reasonable and justifiable one.

The controversy on the issue of abstract right may be summarized as follows: Respondents contend that at common law a carrier was not obliged to carry all kinds of goods, but could restrict its duties and obligations to the scope of its profession. The scope of its profession is to be judged by definite tests, namely, usage, the mode of its conveyance, its public professions, the character of its trade, etc. Under these tests, the respondents can not be claimed to be common carriers of butter, eggs, and dressed poultry. With one inconsequential exception they have never carried these commodities and have steadfastly refused to accept them. This has hitherto been understood by the public. They have been parties to the official classification, which carries rates on these commodities, and their prohibited list has heretofore not specifically excepted these commodities. This, however, has not amounted to a holding out to carry them for the reason that their prohibited list was never intended to be a complete list of all the commodities in the official classification which they would not carry, but only an exception list of such of them as they might possibly have been expected to carry.

Protestants reply that whatever may have been the situation at common law, these respondents are under a statutory duty to carry the commodities in question. They refer to section 1 of the act to regulate commerce, which defines "transportation," and states that

"such transportation" shall be furnished by the carrier "upon reasonable request therefor," and which also makes it the duty of the carrier to establish and enforce "*just and reasonable classifications of property*," for transportation. Reference is also made to section 3, which forbids the carrier to subject any persons or locality or *any particular description of traffic* to any undue prejudice or disadvantage. These provisions, especially of section 1, modify, contend protestants, the common law. Under the act the carrier has no right of election as to the commodities it will carry. One carrier is required to carry the same classes of traffic as every other carrier, and it can not evade its statutory duty by restricting its profession. The carrier is obliged to furnish the necessary transportation and facilities defined by the act for a shipment offered, if the goods are fit for transportation. Moreover, it can establish classifications of property for transportation only if they are just and reasonable. Under the act, therefore, the question now for consideration is whether the shipper's request for the transportation in question is a reasonable one.

Respondents rejoin that the act in the provisions quoted is merely declaratory of the common-law obligations of common carriers. It does not, however, define the term common carrier in the sense in question. Whether, and to what extent, a carrier is a common carrier is still to be determined by the common-law tests, and the respondents are subject to the provisions of the act referred to only in so far as they are common carriers engaged in interstate transportation of the traffic in question, as judged by those tests. The act does not compel respondents, it is argued, to become common carriers of this traffic.

On the issue as to the reasonableness of their request for the transportation, and the reasonableness or unreasonableness of the respondents' refusal to carry the commodities in question, butter, eggs, and dressed poultry, protestants contend that there is a very large and important volume of traffic which would seek the lake routes and would be greatly benefited thereby. The territory, according to protestants, which would be affected would include portions of Minnesota, North and South Dakota, northern Michigan, and Wisconsin, and to some degree Montana. These states are now leading the country in the production of butter and cheese. Minnesota, for example, produced in 1912 131,500,000 pounds of butter, of which it is estimated the state consumed only 10 per cent, and the rest was sent beyond its borders. Its egg tonnage for the same year is estimated at 7,500 cars, of which 3,000 moved out of the state. There is a very large tonnage of dairy products tributary to Lake Michigan ports now moving largely via the Chicago gateway. This movement in 1912 is estimated to have been of butter, eggs, and cheese, 323,310

tons. That traffic, it is said, moves largely in the season of open navigation on the lakes.

The chief market for the production of this northwest country appears to be found in trunk line territory. It is testified, for example, that 70 per cent of the total butter production of Minnesota moves for consumption to points Buffalo and east. Tonnage for the west, it is said, has been shrinking, owing to the increase of the production of the western country.

The all-rail rate on these commodities in carloads from Duluth to New York is \$1.05. This is not a through rate, though there is a through rate between the same points in less than carloads of \$1.12, but a combination rate made up of a proportional third-class rate of 40 cents in carloads from Duluth to Chicago and the second-class rate of 65 cents in any quantity from Chicago to New York. The lake-and-rail rate is 65 cents in any quantity. It is contended by protestants that a large portion of the territory affected would be benefited to the extent of 40 cents per 100 pounds on less-than-carload shipments by the lake service; the balance of the territory from 39 cents down to 1 cent per 100 pounds. It is said, moreover, that the condition under which the product is marketed means that a difference of 1 cent in the rate would change the routing.

Protestants contend that most of the available tonnage would seek the lake route. They estimate, for example, that 140,000,000 pounds, or 7,000 cars, of butter, eggs, and poultry per annum would be available for boats during the season of navigation through the Duluth gateway. While respondents accept this figure as the basis of their expense comparison, they contend that under present rates all of it might not be expected to move as protestants predict. They argue also that as the traffic is a valuable one for the rail lines they would not permit it to be taken away from them by the boats, but would meet the competition. There is also a controversy as to whether the Chicago gateway traffic should be included as a part of the total tonnage available for the boats. Under our conclusions hereafter this question as to the precise amount of potential tonnage is not of decisive importance.

It may be noted in passing that the Northern Cold Storage Company is willing to guarantee a shipment of its product of 100 cars per year for two years. The Bridgman-Russell Company is willing to make a similar guarantee of 150 cars annually for one to four years.

It appears to be conceded that refrigeration would be necessary to handle the traffic satisfactorily. While offering testimony on this phase of the case protestants point out that the question of the reasonableness of their request for refrigeration is brought in issue in Docket No. 6111, Bridgman-Russell Company v. N. Y. C. & H. R.

R. R. Co., which is not to be heard until after the instant issues have been determined. Respondents submitted estimates showing the cost of equipping the No. 1 holds of the boats with the necessary refrigerating plants to be, in the case of the Mutual Company, \$17,200, the Western, \$16,000, and the Anchor line, \$23,100, which are in excess of the estimates made by protestants. Respondents contend that in view of the irregularity of the service and of the further fact that the service would have to be furnished to Lake Michigan as well as Lake Superior ports, the entire thirty-six boats of the three companies would have to be equipped at a cost of some \$600,000. Estimating that the capacity of the proposed refrigerated spaces would be 250 tons of butter or eggs, they calculate that under the average number of trips the total capacity per season would be 243,750 tons, or 487,500,000 pounds. With this they compare protestants' estimate of available traffic of 140,000,000 pounds through the Duluth gateway and argue that the amount of traffic does not warrant the expense of installation of the equipment. With this it should be observed that protestants have not been, and are not now, seeking an immediate service on all the boats, but would be content at the start, at any rate, with a much more limited service. They point out also that it would not be necessary to equip at the start all of the space of the No. 1 holds.

Respondents also urge on the expense side that on account principally of the dampness it would not be possible to carry other commodities in the refrigerated compartments on the westbound trips or on the eastbound if, as they predict, they could not fill the space with butter, eggs, and poultry. Protestants' refrigeration expert, however, shows that this and other difficulties apprehended by respondents, including danger of damage to the refrigeration apparatus, loss of space because of the impossibility of tiering egg crates to the top of the hold, might be obviated by various devices which could be installed at small cost. While all this would involve experiment it may be said that so far as can be judged from the respective statements the probabilities would seem to be that a reasonably economic handling of the traffic would be feasible.

Respondents contend also that the service would not be satisfactory to the shippers on account, first, of the risk of breakage of eggs in trucking over gangplanks to dock and the pounding of the vessel during rough voyages; second, the irregularity of the service; and finally, because of the asserted necessity of refrigeration on the docks at the termini, to hold the shipments waiting the arrival of the boats or cars, which latter would be a charge on the traffic. The first objection would seem to be overcome by the experience of protestants in shipping eggs on other boats on the lakes, principally the boats of the Booth line. Protestants point to the fact that this traffic is handled

to a large degree on a number of ocean steamships. The Mallory and Clyde lines, plying on the Atlantic coast, also carry these commodities in portable refrigerators, supplied by the companies at shipper's request, the shipper bearing the cost of icing. It would seem that in view of the large number of boats in the lake service and the relative regularity of the passenger boats, the second would not be a serious obstacle to the successful handling of the traffic. As to the third, protestants contend that at Duluth, for instance, the shipments might be held in the refrigerator cars which would bring the traffic to the port. They assert, further, that arrangements might easily be made for cars to receive the shipments from the boats, especially if some such consolidation arrangement were made as is customary in the case of all-rail shipments of refrigerated products.

Protestants urge finally that the butter and egg traffic would be vastly more remunerative to the boats than the traffic which is now carried in the No. 1 holds, principally grain and grain products. For example, protestants estimate that on shipments from Duluth to New York the earnings per 40 cubic feet to the boat would be in the cases, respectively, of butter, eggs, wheat, and flour and grain products, \$4.59½, \$2.98, \$0.5821, and \$1.145. This apparently takes no account of the differences in expense of handling the traffic, but whatever these may amount to, they are probably much below the amount of the differences in revenue shown by these figures.

Finally, it may be observed that protestants contend in view of the obvious value of the traffic and the apparent feasibility of carrying it, the reason for the refusal of the lake carriers to handle it is found in the circumstance that these lake lines are owned by the trunk lines, and that it is consequently to their common advantage to keep the traffic entirely on the rails where it pays a very much higher rate in the main than on the lake-and-rail route. While this proposition can not be categorically established and in its nature is open to argument, we think a general knowledge of the situation points toward its correctness. Can there be serious doubt that if boats independent of all-rail influence were plying between the head of the lakes and Erie and other ports they would compete intensely for the rich prize of the dairy traffic of the northwest? Would it be conceivable that independent boats would cooperate in keeping this traffic off the lakes? On the contrary, it must be apparent that they would struggle to secure it.

Nor are we impressed by the objection that if this Commission should compel the respondents to carry these commodities the all-rail carriers would meet this competition, the implication being that "meeting the competition" means the destruction of the lake traffic. The people of the United States have expended many millions of dollars in improving and safeguarding navigation on the great lakes.

The railroads should not be permitted to make it useless nor the boat lines allowed to shirk the public duty which their use and enjoyment of these improvements impose upon them.

While there doubtless are articles which these respondents should not be forced to carry, butter, eggs, and poultry do not fall within that class. The possible volume of traffic may not justify the installation of proper refrigeration equipment on all boats. We believe it fully justifies the experimental equipment of some of them. It has been suggested that such experiment might be made with the three passenger boats of the Anchor line, which now operate regularly on published schedule. It would also seem possible that experiment might be made by equipping a few of the boats of each of the lines serving Lake Superior and Lake Michigan ports to operate under an arrangement of regular alternate sailings from ports of each lake so as to permit of the service of one boat on as many consecutive days, or with as brief intervals between sailings, as possible. We shall not attempt to lay down a definite plan, believing that this may better be left for consultation and arrangement between the operating officers of the lines concerned in conference with the other interested parties. Such plans may be submitted to the Commission. There is good reason to believe that the boats equipped will find the business more profitable than what they now carry in the same space. A careful record should be kept in order that definite knowledge may be had with respect to the future extension of the proposed facilities.

It is our judgment and determination that the request of protestants made upon the respondents to provide transportation for butter, eggs, and poultry is reasonable and that their refusal to provide such transportation in the past was unduly prejudicial and disadvantageous to the particular description of traffic involved in this proceeding.

An order to this effect will be entered.

It will be understood that our decision in this case is not concerned directly with the reasonableness of the rates applying to this transportation which applied prior to the date of the prohibitions under suspension, and that our order here shall be without prejudice to such further action, if any, as may seem advisable after trial of this issue, which is raised in Docket No. 6111, *Bridgeman-Russell Company v. N. Y. C. & H. R. R. Co.*, above mentioned.

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No. 5656.

J. A. ADAMS & SONS COMPANY, LIMITED, ET AL.

v.

VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY.

Submitted January 12, 1914. Decided January 13, 1914.

Upon complaint alleging unjust discrimination against complainants and undue preference to competitors in the application and operation of transit rules; *Held*, That it is unjustly discriminatory against complainants for defendant to assess switching charges against complainants at Monroe, Gibbsland, Ruston, and Sibley, La., while according a like service without charge to complainants' competitors at Vicksburg and Jackson, Miss.

G. F. Thomas for complainants.

R. Walton Moore and *M. Carter Hall* for defendant.

REPORT OF THE COMMISSION.

CLARK, Chairman:

The complainants in this case are severally engaged at Monroe, Ruston, Gibbsland, and Sibley, La., in the manufacture and sale of lumber, staves, and heading (barrel material), the logs and rough material for which are drawn from nearby local points on defendant's road. The material allegation of the complaint is that defendant unjustly discriminates against complainants, in favor of shippers at Vicksburg and Jackson, Miss., in the matter of rates and transit privileges, and the prayer is for transit privileges similar to those extended to shippers at Vicksburg and Jackson.

The transit privileges involved are limited to traffic originating on defendant's road. The pertinent provisions of defendant's tariff rule applicable at Vicksburg are as follows:

Logs may be shipped from stations on the Vicksburg, Shreveport & Pacific Railway, shown in tariff and supplements, to Vicksburg, Miss., for the purpose of being manufactured into lumber and the manufactured product may be reshipped via the Alabama & Vicksburg Railway and Meridian, Miss., to points in Ohio and Indiana, under the following conditions:

The logs must be waybilled to Vicksburg, Miss., at a proportion of 6 cents per 100 pounds, on basis of actual weight, subject to minimum weight of 30,000 pounds when one car is used, and 24,000 pounds for each car when more than one car is used, and delivery made to and freight charges collected on the aforementioned basis from consignees. When the manufactured product is offered for reshipment, the Alabama & Vicksburg Railway agent at Vicksburg, Miss., is authorized, on surrender of inbound paid freight bills not over six months old, covering movement of 3 pounds of logs

in for every pound of manufactured product out, to refund to consignee at Vicksburg, Miss., the amount collected on the inbound movement on basis of 3 pounds in for every pound out, and to waybill the reshipment to final destination at the difference between 6 cents per 100 pounds and the through rate on lumber from original point of shipment, in effect at the time the logs left point of origin, on basis of actual weight, subject to minimum weight on lumber published in tariffs and supplements * * *. The amount refunded must be shown as "advanced charges," and reference to the inbound billing must be indicated on the outbound billing.

* * * * *

Switching charges at Vicksburg, Miss., to and from the manufacturing plant, on either the inbound or outbound shipments, will be absorbed by the Vicksburg, Shreveport & Pacific Railway.

The transit privilege at Jackson applies only on barrel stock manufactured from rough material originating at Holly Ridge, La., a station on the Vicksburg, Shreveport & Pacific Railway. The rule, so far as it is material, reads as follows:

Rough staves and heading (barrel material) may be shipped from Holly Ridge, La., to Jackson, Miss., for the purpose of being dressed and reshipped via the Alabama & Vicksburg Railway and Meridian, Miss., to Cairo, Ill., Cincinnati, Ohio, and Louisville, Ky., proper, and for beyond, under the following conditions:

(a) The shipments must be waybilled from point of origin to resident consignees at Jackson, Miss., at the local tariff rate, and must be delivered to consignees in the usual manner and all freight charges collected thereon.

(b) When the dressed material is offered for reshipment, the Alabama & Vicksburg Railway agent at Jackson, Miss., is authorized on the surrender of inbound paid freight bills, not over four months old, covering movement of two pounds of rough material in for every one pound of dressed material out, to refund to the consignee at Jackson, Miss., the amount collected on the inbound movement, on basis of two pounds in for every one pound out, and to waybill the reshipment to destination at the through rate on staves and heading (barrel material) from the original point of shipment in effect at the time the rough material left point of origin as follows:

To Jackson, Miss., at 6 cents per 100 pounds, on basis of weight of two pounds in for every one pound out; and—

From Jackson, Miss., to destination, at balance of the through rate, on basis of actual weight, subject to established minimum weight, allowing lines beyond Meridian, Miss., their proportion of the through rate, showing the proportion to Jackson, Miss., as "advanced charges," and assessing balance from Jackson to Meridian, Miss., for the A. & V. Ry.

* * * * *

(d) The agent at Jackson, Miss., will file relief claim with the freight claim agent, supported by the canceled paid freight bills, which are surrendered, and the rebilling, for the difference between the amount refunded and the charges billed against the shipment to Jackson, Miss.

* * * * *

(g) Switching charges at Jackson, Miss., to and from the planing mill on either the inbound or outbound shipments will be absorbed by the Alabama & Vicksburg Railway.

The line of the Vicksburg, Shreveport & Pacific extends from Shreveport, La., eastward to Vicksburg, Miss., where it connects

with the Alabama & Vicksburg Railway, both roads being under a common control and management but separately operated. The distances between the points involved in this complaint are as follows:

From—	To—		
	Shreveport, La.	Vicksburg, Miss.	Jackson, Miss.
Holly Ridge, La.....	125	47	91
Monroe, La.....	96	76	120
Ruston, La.....	65	107	151
Gibbsland La.....	41	131	175
Sibley La.....	27	145	189
Shreveport, La.....		172	216

Monroe, Ruston, Gibbsland, and Sibley are junction points of the Vicksburg, Shreveport & Pacific and other roads. The joint through rates to Ohio River crossings and destinations north thereof are the same from these junction points as from the local stations on defendants' line where the logs or rough material originate. Complainants and their competitors at Vicksburg and Jackson may, and probably do, in some instances, draw rough material from the same points, but while their competitors have the benefit of the limited transit privileges described, complainants pay full local rates on the inbound rough material and later, upon submission of evidence that the manufactured product has been shipped out over the Vicksburg, Shreveport & Pacific, within 12 months of the date of delivery to the mill, the inbound charges are reduced by the application of certain lower inbound rates.

The full local rates are based on mileage and range from 4 cents to 8 cents per 100 pounds. The reduced or reshipping rates, applicable only when manufactured product is reshipped via defendant's line, range from $1\frac{1}{2}$ to $5\frac{1}{2}$ cents per 100 pounds.

In addition to these inbound rates complainants must pay switching charges on the inbound cars, while all switching at Vicksburg and Jackson is absorbed in the through rate. The burden of these switching charges is enhanced by the fact that they apply on all inbound cars. Defendant's tariff gives complainants the benefit of the reshipping rates upon a quantity of inbound tonnage equal to three times the weight of the outbound product. Thus, the unit of the outbound shipment being a carload, it follows that a switching charge of \$3 on each of three inbound cars, aggregating \$9, will ordinarily be charged against the single outbound shipment.

A comparison of the transit privileges between Vicksburg and Jackson on the one hand, and between the latter points jointly and the complaining points on the other hand, is essential to a correct

appreciation of the whole situation. The transit privileges at Vicksburg and Jackson are dissimilar in these respects:

(1) Vicksburg may draw logs from any point on the Vicksburg, Shreveport & Pacific, and within a period of six months reship the manufactured product to points in Ohio or Indiana. Jackson may draw rough staves and headings from Holly Ridge, La., only, and within four months thereafter reship the finished material to Ohio River crossings proper or for beyond.

(2) Vicksburg may draw three pounds of logs in for every pound of manufactured product shipped out, paying a proportional rate of 6 cents on the logs in and the balance of the through rate from original point of shipment on the manufactured product when shipped out. Jackson may draw two pounds of rough staves or headings in for every pound of dressed material out, paying the full local rate on the rough material in, which, upon the reshipment of finished material, is reduced to a proportional rate of 6 cents, while the balance of the through rate from original point of shipment is applied on the manufactured product out.

Complainants have 12 months within which to ship their manufactured product and obtain the benefit of the reduced local rates on rough material to their mills. In addition it is to be observed from an examination of the tariffs that, with the exception of the Carolinas and certain New England territory, they have the privilege of shipping to all the territory east of the Mississippi River, including Canada. The shippers from Vicksburg and Jackson, on the other hand, have transit privileges only to the restricted destination territory mentioned in the rules. Furthermore, the rules at the latter points permit rough material to be drawn only in the general direction in which the manufactured product moves. Complainants may draw from either direction, therefore having the benefit of a back haul under the rates paid by them.

Defendant's general freight agent says the average haul of complainants' rough material is 25 to 30 miles; the rate for this distance is 2½ cents. A witness for complainants who is engaged in manufacturing staves at Monroe, the most easterly of the complaining points, testified that his average haul is 15 miles. His inbound rate for this distance is 2 cents per 100 pounds. He may draw in at this reduced rate 3 pounds of rough material for each pound of manufactured product out. His competitor at Jackson can draw material from Holly Ridge only, a distance of 91 miles, at the ratio of 2 pounds in for every pound of manufactured product out, the net rate upon the rough material being 6 cents.

Complainants assert—and it might appear to follow as a matter of course—that the exaction from them, in addition to the through

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rate, of local rates on the rough material to the milling point, plus switching charges upon an equivalent of three cars in for each car out, puts them at a disadvantage with the Jackson shipper, who has the benefit of the through rate from original point of shipment with all switching charges absorbed. Comparisons of the actual transportation cost of a car of manufactured products from the points alleged to be favored, with like items of cost from the complaining points, indicate, however, that the disadvantage of the latter is less than might be expected from a mere glance at the rates. A few illustrations will suffice to show the measure of the disadvantage.

An actual transaction cited in the record is that of a shipment of staves from Jackson to Louisville, Ky. The rough material originated at Holly Ridge, 91 miles from Jackson. The through rate from Holly Ridge is 18 cents; the weight of the staves, outbound, was 43,000 pounds; to get the through rate the Jackson shipper was obliged to surrender billing covering rough material inbound weighing 86,000 pounds. The net inbound rate on the gross tonnage was 6 cents; the balance of the through rate applicable from Jackson to Louisville was 12 cents. Charges in the aggregate sum of \$103.20 were collected at destination, based on the net inbound rate of 6 cents on all the rough material, plus 12 cents, the balance of the through rate, on 43,000 pounds, the weight of the manufactured product out. From Monroe to Louisville the rate is likewise 18 cents. If now we take a similar outbound shipment of finished staves to Louisville, the rough material for which originated at a point 91 miles from Monroe, the aggregate charges on such a shipment would be \$141.23, made up as follows:

Rough material to Monroe, 129,000 pounds, at 4½ cents.....	\$54.83
Finished product, Monroe to Louisville, 43,000 pounds, at 18 cents.....	77.40
Switching of 3 inbound cars, at \$3 each.....	9.00
Total.....	141.23

Similarly, if the haul of the rough material were 35 miles for which the rate is 2½ cents, the cost to the Monroe shipper would be \$118.65. But the latter's average haul, according to his own testimony, is not more than 15 miles. Assuming it were 20 miles, for which distance the rate is the same, viz, 2 cents, the aggregate charges on a shipment of equal weight with that in the illustration would be \$112.20, as compared with \$103.20 on the shipment from Jackson. If the switching charge be eliminated, it will be seen that the Monroe shipper's per-car cost on a shipment representing his average inbound haul is precisely the same as the per-car cost on a transit shipment from Jackson. Having regard, therefore, to the average inbound haul to Monroe, it appears that the per-car cost exceeds that of the Jackson shipper by approximately the amount of the switching charges at

Monroe. As an offset, in part, at least, the Monroe shipper has the advantage of a back haul privilege at the charges shown. It seems fair to say that the latter's disadvantage is more apparent than real.

The similarity of rules but different methods of adjustment obtaining at Vicksburg and Jackson require some further notice. The rule relating to the adjustment at Vicksburg provides that when the conditions attending reshipment from that point have been complied with, the agent of the Alabama & Vicksburg Railway, the outbound carrier, is authorized to refund to consignee at Vicksburg "the amount collected on the inbound movement, on basis of 3 pounds in for every pound out * * *." The Jackson rule provides that when the preliminary conditions have been complied with at that point the agent is authorized to refund to consignee "the amount collected on the inbound movement, on basis of 2 pounds in for every pound out * * *." The language is substantially the same, but the method of adjustment differs in this respect, namely: Under the rule the Jackson agent collects charges in the first instance on basis of the local rate of 8½ cents from Holly Ridge, applied to actual weight of the inbound material. Upon reshipment of the finished material he refunds all the inbound charges. To clear his accounts of these inbound charges he takes a receipt from consignee for the amount which would accrue at 2½ cents and obtains credit therefor by relief claim; the additional amount which would accrue at the proportion of the through rate, viz, 6 cents, he bills forward as advance charges for collection at destination, thereby clearing his own station accounts. The agent at Vicksburg, who collects charges in the first instance at the proportional rate of 6 cents, makes refund in the amount accruing at that rate on the actual weight of the outbound shipment. He obtains credit for this refund by billing the amount forward as advances to be collected at destination; the additional amount, represented by the charges on the excess weight of the inbound material, is not refunded but is retained in his accounts.

The net result of these different methods is the same so far as it affects the through rate and charge; that is, the outbound or transit shipment moves to destination at the through rate from original point of shipment of the rough material. The excess weight of rough material over the weight of the outbound shipment is, in the final adjustment, charged for at the proportional rate of 6 cents applying to the mill point, the only difference in respect to these charges on the excess weight of the rough material being that at Jackson they are refunded to consignee and billed forward for collection at destination, while at Vicksburg they are not refunded, but are in fact paid by the consignee and the amount is retained by the agent at that point.

Certain of complainants manufacture lumber from logs in competition with the Vicksburg manufacturer. An illustrative case of an actual shipment of lumber from Vicksburg to Stryker, Ohio, is introduced in evidence. The logs from which it was manufactured originated at Holly Ridge. The rate from Holly Ridge to Stryker is 28 cents, which divides by allowing lines north of Cincinnati, Ohio, 9 cents. We need concern ourselves only with the proportion south of Cincinnati. The weight of the manufactured lumber was 67,300 pounds. The aggregate charges accruing up to Cincinnati were \$127.87, made up as follows:

Logs to Vicksburg, 67,300 pounds, at 6 cents.....	\$40.38
Lumber, Vicksburg to Cincinnati, 67,300 pounds, at 13 cents.....	87.49

To ascertain the per car cost of the manufactured product from Vicksburg we must add the charges on the excess weight of rough material from Holly Ridge to Vicksburg, which on 134,600 pounds at 6 cents equals \$80.76, making the total per car cost \$208.63. These charges on the weight of the excess rough material to Vicksburg are, as we have seen, collected and retained by the agent at that point instead of being refunded to consignees and the amounts billed forward as advances to be collected at destination, as is done at Jackson.

Holly Ridge is 47 miles from Vicksburg. If we now compare with the above case the charges which would accrue under the present basis on a shipment of lumber from Monroe to Cincinnati manufactured from logs drawn a distance of 47 miles, we shall find the aggregate charges to be \$197.44, made up as follows:

Logs to Monroe, 201,900 pounds, at 3 cents.....	\$60.57
Lumber, Monroe to Cincinnati, 67,300 pounds, at 19 cents.....	127.87
Switching of 3 cars, at \$3 each.....	9.00
Total.....	197.44

The actual per car cost at Monroe, even including switching, is less than at Vicksburg, due to the fact that complainants' net rate on the inbound rough material is only half the proportional rate which the Vicksburg shipper must pay on the excess weight of his rough material.

Complainants filed this complaint in the belief that they were at serious disadvantage resulting from an out and out refund to the Vicksburg and Jackson shippers of all the inbound charges on their rough material. This assumption grew out of the interpretation put on defendant's tariff by complainants' traffic manager. Defendant's general freight agent flatly contradicted the complainants' traffic manager in respect to the operation of the rules, and it thereupon became apparent that the discrimination alleged by complainants

depended largely upon the actual operation of the rules at Vicksburg and Jackson.

No witness was called to testify to the actual operation of these rules, but for the purpose of establishing the facts in respect thereto, it was stipulated that defendant should prepare and file in the record a number of exhibits consisting of certified documents showing precisely how the rules are applied to transit shipments at both Jackson and Vicksburg, and showing also the adjustment of charges made on such shipments. It was further stipulated that from this evidence we should determine whether or not the facts support the contentions of complainants' traffic manager in respect to the measure of the refunds and the discrimination claimed to result therefrom.

The exhibits have been filed in the record as stipulated. They do not sustain the contentions of complainants' traffic manager in respect to the alleged discrimination against complainants on account of refunds made at Vicksburg and Jackson. The misunderstanding undoubtedly grows out of the phraseology of the rules, particularly that clause which provides that upon compliance with the preliminary conditions the agent is authorized "to refund to consignee * * * the amount collected on the inbound movement, on basis, at Vicksburg, of three pounds in for every one pound out," and, at Jackson, "on basis of two pounds in for every one pound out." It is unnecessary to say that the language quoted is ambiguous. Under substantially the same phraseology different methods of adjustment obtain at Vicksburg and Jackson, although the net result contemplated by the rules, to wit: The application of the through rate from original point of shipment, plus 6 cents on the excess weight of the rough material to milling point, is apparently achieved. The attention of defendant is directed to the advisability of redrafting the phraseology of the rules, which is doubtless responsible for the misconstruction placed upon them by complainants' traffic manager.

Defendant offers to establish at the complaining points, rules identically the same as apply at Vicksburg and Jackson—that is, it is willing to assess charges on the inbound rough material to the transit point at a proportional rate of 6 cents per 100 pounds, absorb all switching charges, and rebill the manufactured product at the balance of the through rate, the movement of the rough material, as at Vicksburg and Jackson, to be in the same general direction as that of the manufactured product and no back haul to be required.

It should be remembered that complainants can not, under the reshipping rates, draw rough material from any point west of the terminus of defendant's line at Shreveport. Jackson's haul is arbitrarily fixed at 91 miles. Vicksburg has the option of going west to Shreveport, 172 miles. Under the arrangement offered by defend-

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ant, which in terms would put the complainants upon an exact parity with competitors at Vicksburg and Jackson, their maximum haul would be, from Monroe 96 miles, from Ruston 65 miles, from Gibbsland 41 miles, and from Sibley 27 miles.

Upon close examination, however, it appears that complainants are asking something more than exact parity with their competitors. They ask, in fact, for the elimination of the switching charge and the application of the through rate from original point of shipment; the rough material to be billed to the milling point at the present inbound rates, with the continued privilege of a back haul under the same.

To require defendant to accord this basis would be to require the establishment at complaining points of a more liberal rule than obtains at either Vicksburg or Jackson. This we will not do. It needs but a moment's calculation on the other hand—keeping in mind complainants' average haul of from 15 to 20 miles—to see that the establishment at their milling points of the identical basis now in force at Vicksburg and Jackson would operate to their own disadvantage by increasing the per-car cost of the manufactured product. For example, we have seen, taking the illustrative case of the 43,000-pound car to Louisville, that Monroe, on basis of 3 pounds of rough material in from a point of origin not farther distant than 30 miles, will have an aggregate cost of \$118.65 per car, including switching. If from the same point of origin we apply the identical basis in effect at Jackson, namely, a proportional rate of 6 cents on all the rough material to Monroe, plus the balance of the through rate to final destination on actual weight of the outbound shipment, we have the following:

Rough material to Monroe, 129,000 pounds at 6 cents.....	\$77. 40
Finished product, Monroe to Louisville, 43,000 pounds at 12 cents.....	51. 60
Total.....	129. 00

What is true of the comparative situation with respect to shipments from Monroe is, without question, by reason of the similarity of conditions, true of shipments from the other complaining points, as well as from other milling points on defendant's line from which we have no complaint, but of whose interests we should not be unmindful. The provisions of the act requiring that discrimination must not be unjust, and that preferences and advantages to any particular firm, corporation, or locality must not be undue or unreasonable, necessarily implies that strict uniformity is not always to be enforced; but that all circumstances and conditions affecting carriers and shippers should be considered. *Tex. & Pacific Ry. Co. v. I. C. C.*, 162 U. S., 197, 219.

Upon consideration of all the facts we are of the opinion that the application of transit rules at the complaining points exactly similar

to those in effect at Vicksburg and Jackson would not inure to complainants' advantage. We are further of the opinion that complainants are at a disadvantage only in the matter of the switching charges assessed at their milling points. It is unjustly discriminatory to assess such charges at the points involved while granting free switching at Vicksburg and Jackson. We think substantial justice will be done complainants by putting them on a parity with Vicksburg and Jackson in the matter of these switching charges. We believe, further, that this should be accomplished by the elimination of the switching charges at the complaining points instead of by adding them at Vicksburg and Jackson.

An order will be issued in conformity with these views.

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No. 5554.

RICHMOND-EUREKA MINING COMPANY

v.

EUREKA NEVADA RAILWAY COMPANY ET AL.

Submitted December 22, 1913. Decided January 12, 1914.

1. Rate of \$2.35 per net ton on ore of a value not in excess of \$15 per ton from Eureka, Nev., to Palisade, Nev., when destined to Midvale, Utah, not found unreasonable, and the establishment of joint through rates from Eureka to Midvale not found justified upon the facts of record.
2. The line between Eureka and Ruby Hill, Nev., having been partially destroyed and the duty of the owner to restore and operate the same, upon the facts of record, not being a question for determination by this Commission, the establishment of through rates from Ruby Hill to Midvale not considered. Complaint dismissed.

Pillsbury, Madison & Sutro for complainant.

McNair & Stoker for Nevada Transportation Company.

Geo. H. Smith and H. A. Scandrett for Southern Pacific Company and Oregon Short Line Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complaint in this case, brought by a corporation owning mines located near Ruby Hill, Eureka county, Nev., seeks primarily the reestablishment of the through rates formerly in effect on ore from Ruby Hill and Eureka, Nev., to Midvale, Utah. The establishment of through inbound rates on various other commodities is also asked, but it was agreed by the parties at the hearing that for the purpose of this case only the rate on ore of a value not greater than \$9 per ton need be considered.

The Eureka Nevada Railway, a narrow-gauge line, runs south from Palisade, Nev., a point on the Southern Pacific 256 miles west of Ogden, Utah, to Eureka, a distance of 84 miles, and has a partially destroyed branch about 4 miles in length from Eureka south to Ruby Hill. Midvale is 10 miles south of Salt Lake City, Utah, and 47 miles south of Ogden. The distance from Eureka to Midvale via the Eureka Nevada Railway in connection with the Southern Pacific to Ogden and the Oregon Short Line beyond is approximately 387 miles.

No through rates on any commodities are published to or from points on the Eureka Nevada Railway. The local rates on ore are

on a per-ton-mile basis, the lowest being 2.3 cents on a value not to exceed \$15 per ton, carload minimum 40,000 pounds. On this basis the rate from Eureka to Palisade is \$2.35 per ton. The rate of the Southern Pacific from Palisade to Midvale is \$3.35, and in addition there is a dumping charge at the former place of 25 cents per ton, making the through charge, Eureka to Midvale, \$5.95 per ton.

For some time prior to 1905 the line from Palisade to Eureka was owned by the Eureka & Palisade Railway Company and operated for passenger traffic only, but between that year and March, 1910, a considerable amount of ore, constituting, in fact, the chief tonnage of the road, was handled to Midvale, Utah, from Ruby Hill, to which latter point the line had been extended following agreements with the complainant. This traffic was transferred to the Southern Pacific through ore dumps, and the rate applicable thereon was at first \$2.75, and later \$2.95 per ton. Upon the increase indicated the division of the Eureka & Palisade was increased from 85 cents to \$1.35 per ton.

In March, 1910, the line was partially destroyed by washouts, and in November of the same year was sold at public auction under foreclosure proceedings to the United States Smelting Company, which operates smelters at Midvale and holds the controlling interest in the complainant corporation. Mr. George Whittell, the owner of \$365,000 of the bonds of the Eureka & Palisade, redeemed the road and caused to be incorporated the Eureka Nevada Railway Company, capitalized at \$500,000, that amount representing approximately the sum of Mr. Whittell's holdings in the former company, the cost of redemption (\$86,345) and the amount expended to put the line in condition for operation (about \$58,000). The new corporation did not operate the line but leased that portion between Palisade and Eureka to the Nevada Transportation Company at a rental of \$25,000 per annum. About 2 miles of the road nearest Ruby Hill was torn up, the rails and ties being used for replacements on the main line. When the Nevada Transportation Company, the lessee, commenced operation in May, 1912, the line had been idle for over two years, and the repairs made by the lessor were only such as to put it in condition for light traffic. At present the line contains several miles of iron rail and about 30 miles of 28-pound steel rail, the balance being 35-pound steel rail. The engines are suitable only for light traffic.

The region served by the Eureka Nevada Railway is described as practically desert and yields very little steady traffic. There are no mines in operation between Eureka and Palisade, and the Nevada Transportation Company has been able to earn only about half the rental.

The complainant, the mines of which have not been operated since the washout in March, 1910, estimates that there remains to be mined at Ruby Hill in the neighborhood of 500,000 tons of ore of the quality described and anticipates that lower in the mines will be found ore of greater value, which on the graded scale of rates in effect would pay higher charges.

It is the contention of the Nevada Transportation Company that under present conditions it can not handle heavy traffic with safety or profit and that to purchase new equipment and to place the line in condition to transport 200 tons of ore a day, the amount complainant states it desires to ship from Ruby Hill, would entail an expenditure of about \$115,000.

The right of the Eureka Nevada Railway Company to destroy its line to Ruby Hill and its duty to restore and operate the same, upon the facts appearing, do not present questions for determination by this Commission, the authority of which with reference to interstate rates is strictly limited by the provisions of the act to regulate commerce and its amendments; consequently so long as the road remains in its present condition we can not consider the establishment of rates to or from that point. The complainant, however, asks for the establishment of rates from Eureka also, but does not state that it will "unwater" its mines and resume operations unless it secures service and through rates from Ruby Hill.

A rate of \$5.95 per net ton for the transportation of ore of the value stated a distance of 387 miles on well-established systems of transportation, over which the traffic of numerous classes is dense, would appear on its face to be high, but in this case it must be borne in mind that the route from Eureka to Midvale includes 84 miles over a narrow-gauge road under conditions of great sparsity of traffic, and that to handle this ore in volume the narrow-gauge road would have to provide itself with suitable engines and cars and improve its tracks at an expense which appears not to be called for as to its other traffic.

We are unable to find from the facts of record that the rate of \$2.35 per ton from Eureka to Palisade is unreasonable when applied to through transportation to Midvale, or that the establishment of joint through rates from Eureka to Midvale is justified. We will not now pass upon the reasonableness of the rate from Palisade to Midvale, the record not containing sufficiently definite testimony upon which to base an opinion.

The complaint will be dismissed.

No. 3799.
SANTA ROSA TRAFFIC ASSOCIATION
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted March 8, 1913. Decided January 5, 1914.

1. The opinion in the original report herein, 24 I. C. C., 46, declaring that the maintenance of terminal rates to Santa Clara, San Jose, and Marysville, Cal., in the absence of similar rates to Santa Rosa, Cal., was unduly prejudicial to Santa Rosa, and requiring defendants to remove the discrimination, affirmed on rehearing.

2. Petition of Intervener Fresno Traffic Association dismissed for want of proof.

W. F. Cowan and C. J. Lathrop for complainant.

Waldo S. Johnson for city of Marysville, intervener.

J. E. Alexander for city of San Jose and city of Santa Clara, interveners.

Frank M. Hill for city of Fresno, intervener.

Frank Lyon for Fresno Traffic Association, intervener.

C. W. Durbrow and H. A. Scandrett for Southern Pacific Company.

REPORT OF THE COMMISSION ON REHEARING.

McCHORD, Commissioner:

This is a proceeding originally instituted by the Traffic Association of Santa Rosa, Cal., against the Southern Pacific Company and other carriers, seeking an extension to Santa Rosa of the terminal rates on westbound transcontinental traffic in effect to San Jose, Santa Clara, Marysville, and other California points.

After full inquiry into the merits of the case, as disclosed by the evidence offered at the initial hearing, the Commission found that none of the favored towns was actually a terminal point—that is, accessible by deep-water craft—but that in each instance a wagon haul from the nearest port was necessary to complete delivery.

With respect to complainant, Santa Rosa, it was found that no cartage beyond tidewater was necessary, for the reason that an electric line from Petaluma to Santa Rosa, a distance of 16 miles, completed an available rail-and-water route from San Francisco, 24 I. C. C., 46.

In these circumstances it was concluded that if the defendants were justified in maintaining terminal rates to San Jose, Santa Clara, and Marysville, they were even more than justified in granting similar

rates to Santa Rosa; and while the Commission expressly declined to approve an extension of terminal rates, defendants were ordered to abstain from charging higher rates on westbound transcontinental traffic to Santa Rosa, Cal., than they charged for similar transportation to Santa Clara, San Jose, and Marysville. The effective date of this order was fixed by the Commission as August 15, 1912.

Thereafter, on petition of defendants for rehearing, the order of the Commission was set aside, the case was reopened, and permission to intervene was extended on behalf of San Jose, Santa Clara, and Marysville. The Traffic Association of Fresno, Cal., also was permitted to intervene, it being contended that whatever relief might be allowed to Santa Rosa should likewise be applied to Fresno. It is this case on rehearing that is now before the Commission.

After a consideration of the evidence adduced by interveners at the rehearing it is found that, with the exception, perhaps, of the situation as to Marysville, the facts established at the former investigation are not materially disturbed.

Most of the testimony offered on behalf of San Jose and Santa Clara tends to show that both those points owe their development to rates they have enjoyed to the disadvantage of other localities not dissimilarly situated. Thus it is shown that industries have been established at the favored points solely by reason of these rates, whence the inference is inevitable that the denial of such rates to other points has resulted in their being avoided by investors in the location of industrial enterprises. A situation of discrimination is thus disclosed.

The interveners on behalf of San Jose and Santa Clara have thus presented a compelling argument against a continuance of their own enjoyment of privileges denied to other points the situation of which with respect to water competition is not dissimilar to their own.

It is urged that the withdrawal of the terminal rates from Marysville, San Jose, and Santa Clara will destroy the business interests that have developed as a result of the rate arrangement now in operation. But in a situation such as that presented here, it is not the purpose of the Commission to permit the continuance of an inequitable condition when the only barrier to the establishment of equality is the possible impairment of some supposedly vested interest which has become vested, if at all, primarily by reason of the discrimination condemned.

In determining whether or not occasion has been shown for any modification of the conclusions heretofore deduced, we may, therefore, disregard the evidence offered by the interveners at the rehearing with respect to the possible consequences of the Commission's order.

The question then resolves itself into a consideration of the differences, if any, with respect to water competition, that would war-

warrant the existence of the terminal rates to San Jose, Santa Clara, and Marysville, in the absence of similar rates to Santa Rosa and to Fresno.

The claims of San Jose and Santa Clara are based upon the contention that those points are within the radius of a wagon haul from Alviso, the common port of both; but on the other hand it is shown that Santa Rosa is within a radius of 16 miles from Petaluma, a tidewater point, and that it is connected therewith by an electric line, which may be assumed to afford an instrumentality of transportation more economical than that by means of wagons. And, while some question has been raised by interveners as to the accessibility of Petaluma to vessels other than those of the lightest draft, the showing in favor of the latter point seems quite as conclusive as that with which navigability to the other ports involved has been established. The availability of the electric line between Petaluma and Santa Rosa presents a situation not dissimilar to that with respect to the wagon haul from Alviso to San Jose and Santa Clara, and if Santa Rosa should substitute wagons or motor trucks for the cars of the electric line in the hauling of traffic from Petaluma to Santa Rosa, it is evident that the difference between the accessibility of the latter point and that of San Jose and Santa Clara via their respective ports, would be a difference merely of degree.

In these circumstances the Commission would not be warranted in holding that any substantial dissimilarity in traffic conditions exists as between complainant and the interveners, San Jose and Santa Clara.

It remains for us, then, to determine whether or not the navigability of the Feather River, on which the town of Marysville is situated, has been so definitely established as to warrant the continuance of the rates now in effect to Marysville, even if defendants should withdraw such rates from San Jose and Santa Clara.

The interveners on behalf of Marysville have offered numerous photographs of the Feather River; but these exhibits, with their accompanying explanations, are not conclusive of the question of navigability. Neither is the testimony that soundings have been taken at various points along the river and that at the points so measured the depth has been found sufficient to permit of navigation. And, while considerable testimony has been adduced to the effect that occasional vessels have actually been carried up the river to Marysville, the circumstances incident to these events are not such as to afford, in and of themselves, a basis for the maintenance of terminal rates. Thus it is suggested that troops were carried from Marysville to Sacramento via the Feather River during the railroad strike of 1894, but this was a period of exigencies and the circumstance

disclosed does not afford an adequate criterion whereby to judge the navigability of the river at the present time.

The city of Marysville has also offered the categorical statement of an army engineer that the War Department of the United States would not permit the construction of a bridge without a draw across the Feather River below Marysville. This, it would seem, is a question determinable in the final analysis only by a formal hearing before another department of the government, and, even assuming that the War Department should, after such a hearing, decline to authorize the spanning of the Feather River by a bridge without a draw, that decision in itself would not be conclusive of the present or actual navigability of the stream.

In the circumstances, while it is conceded that the Feather River *might be rendered navigable*, the interveners on behalf of Marysville have failed to prove that, at the time of the rehearing, the degree of potentiality with respect to navigation was sufficient to afford a factor in the establishment of water competitive rates.

The Commission is therefore of the opinion that the situation as to Santa Rosa with respect to transportation facilities is not sufficiently dissimilar from that of Marysville, San Jose, and Santa Clara as to justify the carriers' denial to it of the terminal rates now in effect to all the latter points.

Some argument has been offered as to whether or not the provisions of the fourth section of the act to regulate commerce are controlling here. The determination of this question, however, is not essential to a decision in the instant case, for the reason that the merits of complainant's claim are such as clearly to render appropriate an application of the provisions of section 3.

The only question then remaining for determination is as to whether or not the showing on behalf of Fresno has been such as to warrant an extension to that point of the rates to be applied to Santa Rosa in the event of a reduction of such rates to the terminal basis.

The claims of Fresno are predicated, not upon accessibility to navigation, but upon the fact, as shown, that much of the transcontinental traffic now carried by defendants under the terminal rates in question passes through Fresno en route to terminal points—a situation common to none of the other interveners. Their only reference to the element of water competition, as justifying terminal rates to Fresno, is the contention that even though that point is not accessible to navigation, neither are the towns of Marysville, San Jose, and Santa Clara. In other words, the claims of Fresno are predicated not upon the merits of its own location, but upon the weakness of the claims of all the other interveners.

Were the decision of this case contingent upon an interpretation of the fourth section, the showing on behalf of Fresno with respect to its intermediate location might have been material; but inasmuch as the determination of the question here involved is based upon the provisions of section 3 and not of section 4, that argument in itself is not persuasive.

The status of Fresno as an intervener in this proceeding is such that it was incumbent upon its traffic association to show a substantial similarity with respect to water competition between the towns of Fresno and Santa Rosa. In the absence of such a showing the Commission is not warranted in making an affirmative order with respect to Fresno in the instant case.

The carriers have urged that the alternative provisions of the original order in this case are impracticable of fulfillment. This the Commission does not concede. The manner of its observance is a matter peculiarly within their province, and it is not for the Commission at this time to offer a suggestion as to which of those alternatives they shall elect. It is believed, however, that whichever course they may pursue will result in the elimination, to the extent involved, of an unjustly discriminative condition that should not exist.

The conclusions heretofore announced are affirmed. Defendants will be required to cease their undue discrimination in the premises, and so long as terminal rates are applied to San Jose, Santa Clara, or Marysville, rates no higher must be available to Santa Rosa. It will be so ordered.

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INVESTIGATION AND SUSPENSION DOCKET No. 264.
FABRICATION-IN-TRANSIT CHARGES.

Submitted November 5, 1913. Decided January 12, 1914.

Respondents herein attempted to increase the charge for fabrication-in-transit service at points in central freight association territory from 1½ to 2½ cents per 100 pounds, and in some instances to change the rules governing transit. Protestants and intervener ask that respondents publish a more inclusive list of iron and steel articles which may enter into the fabricated product, extend the time limit of transit, and, under proper cancellation of inbound billing, permit substitution. *Held, That—*

1. Cost figures submitted by respondents as corrected do not justify the proposed increase in the charge for the fabrication-in-transit service. Rate comparisons show that the increase can not be permitted to become effective if a substantial rate equality—one of the chief purposes of transit—at fabricating points is to be maintained. Rather than permit a variance in the charge for the stoppage in transit at the many fabricating points, the additional expense incident to the service, if not at present adequately covered, may be reflected in the general level of rates on the article which enjoys the service. Respondents required to cancel the tariffs under suspension and to maintain for the statutory period the present charge of 1½ cents per 100 pounds.
2. Under section 6 of the act it is unlawful for a common carrier to allow substitution without clearly specifying in its tariffs the right to substitute.
3. Taken collectively, the rate, the transit service specified, and the regulations governing it are a unit, representing definite duties and obligations.
4. Under the circumstances of this case respondents should change their transit rules and regulations so as to specifically provide for substitution of material drawn from the lines of different carriers and different territories, and should provide for proper accounting, and the cancellation of inbound billing to cover outbound shipments, local consumption, waste, or shrinkage; frequent checking of unfabricated and fabricated material with billing on hand; and the cancellation of billing in excess of the fabricated and unfabricated material on hand, requiring the use of the oldest billing for that purpose.
5. Respondents' tariff should be uniform in their provisions with regard to substitution.
6. The list of articles upon which fabrication in transit is permitted should include all articles that are necessary for the fabrication of sections of bridges and buildings, and should be made uniform in respondents' tariffs.
7. Uniformity should be established in the time limit within which to fabricate under the transit rate.
8. The fundamental basis and chief justification of transit is the equalization of rates and the prevention of discriminations which could not otherwise be avoided.

9. Transit involves rate difficulties peculiarly its own. These difficulties and the confusion which frequently results therefrom obscure the publication of rates and deprive tariffs of one of their most essential qualities, namely, clearness. Intricacies of this nature should be most thoroughly analyzed and weighed before transit is extended into new fields. To deal with transit as an established service in a limited field is one thing; to follow a policy of its indefinite extension is another.
10. Ordinarily transit can only be accorded products which move at the same or very nearly the same rates as the material from which they were made.
11. It is reasonable to withhold transit from a product that is essentially different from the raw material.
12. The Commission can not look with favor upon an extension of transit to include additional processes unless it is clearly shown to be necessary in order to avoid discrimination, promote commerce, and effect other proper and lawful results.

A. P. Burgwin and *W. A. Parker* for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

William W. Collin, jr., for New York Central lines.

W. A. Parker and *W. C. Coleman* for Baltimore & Ohio Railroad Company.

M. B. Pierce for Erie Railroad Company.

C. H. Stinson for Wabash Railroad Company.

Littleford, James, Ballard & Frost, and *Francis B. James* for King Bridge Company, Canton Bridge Company, Lackawanna Bridge Company, Riverside Bridge Company, and Toledo Bridge & Crane Company.

E. E. Gates for Indianapolis Chamber of Commerce, Noelke-Richards Iron Works, and Central States Bridge Company.

Charles L. Belsterling for American Bridge Company and Empire Bridge Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This is an investigation into the propriety of increased charges at certain points in central freight association territory for the service of stopping shipments of structural steel to be fabricated in transit, and of changes in the rules governing transit. These changes are proposed in tariffs published by the Baltimore & Ohio Railroad Company; Chesapeake & Ohio Railway Company of Indiana; Chicago, Indianapolis & Louisville Railway Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Erie Railroad Company; Hocking Valley Railway Company; Lake Erie & Western Railroad Company; Fort Wayne, Cincinnati & Louisville Railroad Company; Northern Ohio Railway; Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company;

Pennsylvania Company; Pittsburgh & Lake Erie Railroad Company; Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Toledo & Ohio Central Railway Company; Wabash Railroad Company; Wheeling & Lake Erie Railroad Company; and Lorain & West Virginia Railway. The tariffs under consideration affect the transit privilege at the following points: Allegheny, Claysville, Rankin, Greenville, Economy, Morado, Rochester, Canonsburg, and Carnegie, Pa.; Canton, Cleveland, Toledo, Martins Ferry, Mount Vernon, Cincinnati, Bellefontaine, Elmwood, Kenton, Bedford, Cleveland Pier, Euclid Avenue, Wason Street, Woodland Avenue, Massillon, Brookville, Columbus, and Ivorydale, Ohio; Buffalo, N. Y.; Wheeling, W. Va.; Detroit, Mich.; Indianapolis, Muncie, Columbus, La Fayette, Newcastle, Rochester, Elkhart, Winamac, and Attica, Ind.; Chicago, Bloomington, and Washington Heights, Ill. At all of these points the charge for fabrication in transit service is 1½ cents per 100 pounds, which it is proposed to raise to 2½ cents per 100 pounds. While in some instances no further change is contemplated in the tariffs under suspension, in others it is proposed to change the rules governing the transit service.

Before the effective date of proposed tariffs petitions protesting the proposed increase and changes in rules were filed by the King Bridge Company, of Cleveland, Ohio; the Canton Bridge Company, of Canton, Ohio; the Lackawanna Bridge Company, of Buffalo, N. Y.; the Noelke-Richards Iron Works, of Indianapolis, Ind.; the Riverside Bridge Company, of Martins Ferry, Ohio; the Toledo Bridge & Crane Company, of Toledo, Ohio; and the Indianapolis Chamber of Commerce, of Indianapolis, Ind. It appeared to us that the propriety of the increase in the charge for transit and the reasonableness of the new rules should be investigated before being permitted to go into effect; hence the tariffs were suspended first until September 12, 1913, and by subsequent order to March 12, 1914. The present investigation resulted therefrom. The American Bridge Company, which owns fabricating plants at a number of points here involved, was allowed to intervene.

Structural steel is manufactured in the Pittsburgh district, embracing Duquesne, Homestead, Clairton, and Pittsburgh, Pa.; at Johnstown and Sharon, Pa.; and Buffalo, N. Y.; at Harrisburg, Steelton, Phoenixville, Pottstown, Pottsville, Pencoyd, and Bethlehem, Pa., and in the Chicago district, embracing Chicago and Waukegan, Ill., and Indiana Harbor and Gary, Ind. The bulk of the steel used at fabricating points covered by the tariffs under suspension comes from the Pittsburgh district or from points taking Pittsburgh rates. It was testified that there was also some steel used which was manufactured at Bethlehem and Pencoyd, Pa. There is no structural steel

manufactured in the region between Gary, Ind., and Youngstown, Ohio, where the protesting fabricating plants are located.

A clear distinction exists between the process by which structural steel is manufactured and the subsequent process by which it is adapted for use in bridges, buildings, and other structures. In connection with the latter, custom has established the use of the word "fabrication" to distinguish it from the previous one of manufacture. The manufacturing process of structural steel embraces the conversion of the ore into steel, the forming of the steel into billets, and the transforming of the billets, by passing them between grooved rolls, into various forms, known as structural steel plates, bars, angles, channels, beams, tees, zeos, and so on. The operations of the shop which cuts these various structural steel shapes to the required length, punches, drills, planes the ends, and rivets the structural steel together are termed by the trade "fabrication." Throughout the country fabricated and unfabricated structural steel moves at the same rate. This common rating, which is of long standing, places upon a parity all fabricators located at the original point of manufacture, at rate-breaking points, and at places where the structural steel is to be finally erected or used. Under the fabrication-in-transit provisions here under consideration, a fabricating plant situated along the route between the point of manufacture and the point where the structural steel is to be used in a bridge or building, may, subject to certain rules prescribed in the tariffs, receive shipments from the roller mills, fabricate the steel at its plant, and forward the shipments at the balance of the through rate from point of manufacture to point of ultimate destination, plus a charge for stoppage in transit. Some of the tariffs, instead of providing for the movement forward from the fabricating plant at the balance of the through rate, provide that upon surrender of paid expense bills for the local charges in and out of the fabricating plant, the difference between the amount of the local rates and the amount of the through rate, plus the transit charge, will be refunded.

The propriety of a fabrication in transit service is not here directly in issue. Nevertheless, we believe it should at the outset receive at least passing consideration. The evidence is not clear regarding the extent to which transit was accorded on structural steel in central freight association territory before it was lawfully published in carriers' tariffs. Reference was made at the hearings and in briefs to the case of *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 15 I. C. C., 370, 375, where it was stated that:

During a period of several years prior to 1901 the railroads accorded the stoppage-in-transit privilege at Indianapolis on steel shipments from Pittsburgh destined to western points.

29 I. C. C.

The complaint in that case included a prayer for the establishment of transit on structural iron and steel at Indianapolis, and alleged that without transit Indianapolis was discriminated against as compared with Chicago and St. Louis, on shipments originating at Buffalo, N. Y., and Pittsburgh and Johnstown, Pa., and destined to points west of Indianapolis. Our decision was rendered shortly after carriers had published transit in their tariffs, and consequently that complaint was dismissed in so far as it related to fabrication in transit.

In the instant case it was testified that fabrication in transit was first established in central freight association territory in December, 1908, by the Wheeling & Lake Erie Railroad Company at Canton and Toledo, Ohio. We do not find transit authorized by published and filed Wheeling & Lake Erie tariff until May 16, 1909. This was done with a view to placing the fabricating plants located at those points upon a rate equality with the plant of the American Bridge Company at Ambridge, Pa. Ambridge is in Pittsburgh rate territory, and consequently that plant was under a total transportation cost equal to the through Pittsburgh rate to points of destination of the fabricated material, plus a charge for the movement from the roller mills at Pittsburgh to the fabricating plant at Ambridge. The latter had been fixed at 30 cents per ton, and in order to equalize the freight charges at Canton and Toledo with those at Ambridge, the Wheeling & Lake Erie made the charge for stoppage in transit $1\frac{1}{2}$ cents per 100 pounds. On February 8, 1909, the Lake Shore & Michigan Southern met the competition of the Wheeling & Lake Erie at Toledo by establishing the same service at the same charge. On March 6, 1909, the Lake Shore established transit at Cleveland, Ohio; on December 28, 1909, at Buffalo, N. Y.; and on November 1, 1910, at Elkhart, Ind. On January 26, 1909, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company established it at Indianapolis, and subsequently included other points where steel fabricators were located. On March 3, 1909, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company authorized fabrication in transit at Indianapolis and Muncie, Ind., and at Carnegie and Canonsburg, Pa., and on March 15, 1909, the Pennsylvania Company provided transit at Canton, Toledo, and a large number of points upon its line. On April 1, 1909, the Baltimore & Ohio Railroad Company provided for transit on steel at fabrication points upon its line, and on May 4, 1909, the Erie Railroad Company followed the action of its competitors. It was argued by defendant carriers that the establishment of fabrication in transit in central freight association territory was due to the action of the Wheeling & Lake Erie, and that the other carriers were compelled to follow for competitive reasons.

Our report in *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, supra, 15 I. C. C., 370, 375, also contains the following reference to the equalization of rates at interior fabricating plants in western trunk line territory with those at Pittsburgh and at rate-breaking points:

The privilege of stoppage in transit at the through rate is not the only method by which competing intermediate points may be equalized, and complainant in this connection points to the adjustment of rates via Des Moines, Iowa, which is accorded commodity rates aggregating the same as Chicago and St. Louis from the Pittsburgh-Buffalo district to Missouri River points. To secure the stoppage-in-transit privilege at the through rate of 45 cents per 100 pounds (which is the same as the Chicago and St. Louis combinations), Des Moines is constituted a rate-breaking point on shipments of steel to Missouri River points.

Another instance of equalizing interior fabricating plants with those at the source of the unfabricated product is revealed in *Ottumwa Bridge Co. v. C., M. & St. P. Ry. Co.*, 14 I. C. C., 121. In that case the complainant was situated at Ottumwa, Iowa, and competing fabricating plants at Chicago, Ill., St. Louis, Mo., Clinton and Des Moines, Iowa. In our discussion of the rate situation at these various points, on page 124 of the opinion, it is shown that the rates in and out at each point were adjusted by the carriers so that the total charge from Pittsburgh to Kansas City was in each case the same, and consequently all of these points of fabrication were on a rate equality with each other and with Pittsburgh. It is alleged on behalf of the intervener and the protestants that it was not until a change was made in the long-established practice of constructing rates upon Chicago, the Mississippi, and the Missouri rivers that the carriers in western trunk line territory found it necessary to publish fabrication-in-transit tariffs for plants located at what were formerly rate-breaking points. The transit arrangement is now general throughout western trunk line territory.

In eastern trunk line territory proportional rates and transit on structural steel were published by the Baltimore & Ohio Railroad in its tariff I. C. C. No. 8023, effective November 9, 1908; by the New York Central & Hudson River Railroad tariff circular I. C. C. No. B-4584, effective August 28, 1906; by the Delaware, Lackawanna & Western Railroad tariff I. C. C. No. 3788, effective May 31, 1906; by the Erie Railroad Company tariff I. C. C. No. 5186, effective October 13, 1906; and by the Pennsylvania Railroad tariff I. C. C. No. D-2326, effective May 10, 1903. The transit arrangement is general at fabricating points in eastern trunk line territory. In southern classification territory it is provided by the Norfolk & Western at Roanoke, Va., and by other roads at Memphis, Tenn., and New Orleans, La.

We have in the past frequently expressed the view that properly established transit service may be productive of much good in distributing manufactures over wider areas and in equalizing transportation conditions affecting competitors. In *In re Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151, 171, we said:

Transit in many cases is beneficial in its application. When it can be applied without discrimination it results in the diffusion of business, in giving to rival communities the relative advantages to which they are entitled, and which can be accorded them in no other way, and, generally speaking, in the application of lower transportation charges. The commercial operations of this country have in many instances grown up upon the exercise of transit privileges and could have been developed in no other way. This Commission has never held that transit was to be condemned in so far as it was beneficial and could properly be applied—

and in the *Transit case*, 24 I. C. C., 340, 348, we used the following language:

These privileges had grown up, and the Commission found them in full vigor when the act to regulate commerce became a law. In the earlier cases we hesitated, in the absence of power to regulate transit, to lend our approval to the practice. In fact, many carriers and shippers insisted that the practice be abolished altogether and that flat rates be substituted in lieu thereof. However, to-day transit has become a practice of such universal prevalence upon all the railroads that it has become as much the duty of this Commission under the law as amended to supervise and regulate these rules and practices, as the rates, rules, and practices generally of all interstate carriers.

As applied to certain commodities transit has been beneficial, and its abrogation would probably result in an unjustifiable destruction of property values. Grain is milled in transit, cotton is compressed, wool is sorted and graded, lumber is dressed, live stock is fed and grazed and also stopped to test the market, and structural steel is fabricated. Other illustrations could be cited. Most commodities, however, do not enjoy transit. At best transit involves rate difficulties peculiarly its own. Shall these difficulties and the confusion which frequently results therefrom obscure the publication of rates and deprive tariffs of one of their most essential qualities, namely, clearness? We believe that considerations of this nature should be most thoroughly analyzed and weighed before transit is extended into new fields. To deal with transit as an established service in a limited field is one thing; to follow a policy of its indefinite extension is quite another.

It is obvious that ordinarily transit can only be accorded products which move at the same or very nearly the same rates as the material from which they were made. It is reasonable to withhold transit from a product that is essentially different from the raw material. *Douglas & Co. v. C., R. I. & P.*, 16 I. C. C., 232.

The evidence shows that if fabrication-in-transit arrangements were abrogated in central freight association territory, fabricating plants in the Pittsburgh and Chicago districts would remain on practically an equality with each other except that Chicago would retain its advantage of 20 cents per ton in cases in which the rates break there, due to the charge of 1 cent per 100 pounds for the movement from roller mills to the fabricating plants in the Pittsburgh district. This parity would also extend to St. Louis and Cincinnati, which, like Chicago, are rate-breaking points upon certain traffic, and to plants in eastern trunk line and western trunk line territories. For instance, the rate on structural steel from Pittsburgh to Toledo and from Toledo to Chicago is in each case 13 cents per 100 pounds. If the fabricating privilege were withdrawn the Toledo plant would have to pay the sum of the two locals, or 26 cents per 100 pounds, upon shipments to Chicago, while under the present arrangement it pays 19.5 cents, the through rate Pittsburgh to Chicago of 18 cents plus the fabrication-in-transit charge of 1.5 cents. The rate from Chicago to St. Paul, Minn., is 14 cents per 100 pounds, and in the movement to St. Paul the total freight charges for the Toledo plant would be 40 cents if transit were abrogated, while it is 33.5 under the present arrangement. For transportation to St. Paul the fabricating plant at Rankin, Pa., pays total freight charges of 33 cents per 100 pounds, 1 cent for the movement from the roller mills at Pittsburgh to Rankin plus the through Pittsburgh rate. From some of the roller mills at Pittsburgh the switching rate to Rankin is $1\frac{1}{4}$ cents per 100 pounds. The plants located in the Chicago district, however, pay total freight charges of only 32 cents per 100 pounds, 18 cents Pittsburgh to Chicago plus 14 cents Chicago to St. Paul. Thus it is seen that the withdrawal of fabrication-in-transit service at Toledo would place the plant there situated at a disadvantage of \$1.40 per net ton as compared with the plant at Rankin, and \$1.60 per net ton as compared with plants in the Chicago district. The plants at the numerous other points at which the tariffs under suspension provide for fabrication in transit would be under a like disadvantage. It was testified that the profits of the fabricator are in many cases less than \$1.40 per ton.

We have called attention to the spread of transit on structural iron and steel in carriers' tariffs throughout the country. The fact that this arrangement has become so widespread and that so much money has been invested in the industry in reliance upon the continuation of transit and that it affects an equalization of freight rates of the interior fabricator with those of plants located at rate-breaking points argue for the maintenance of the fabrication-in-transit service for structural iron and steel as just and reasonable.

Although carriers' proposal in the tariffs under suspension is not the withdrawal of transit, but rather an increase in the charge and

changes in the rules governing it, it was deemed desirable to discuss somewhat its history and application and to refer to some of the larger aspects of the problem here presented.

The attitude of some of the respondents is that transit is a privilege which carriers can not be compelled to grant and that consequently there is some question with regard to our jurisdiction in deciding the propriety of the proposed changes. Since the amendments to the act of 1906 we have repeatedly held that transit is a practice or regulation included within the provisions of section 15, over which the Commission has jurisdiction. In *Spiegle v. S. Ry. Co.*, 25 I. C. C., 71, 73, we said:

The defendant suggests that we have no jurisdiction to deal with this question, and in confirmation of this view refers to several of our decisions. It is true that the Commission held, previous to the Hepburn amendment of 1906, that the privilege of milling in transit was one which the carrier might or might not accord, at its option, provided no discrimination was effected, and several expressions can be found in the opinions of the Commission subsequent to 1906 which indicate the same view after the passage of that amendment. But it was finally held in a recent case that transit in its various forms was a regulation or practice affecting the rate of which this Commission had jurisdiction, and under that holding it is competent for us to inquire whether this charge is excessive. In *the Matter of Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151.

It is clear that under the act as amended in 1906 and 1910, it is competent for this body to inquire into the propriety of the increased charges and the changes in the rules.

Regarding the propriety of the increase from $1\frac{1}{2}$ to $2\frac{1}{2}$ cents per 100 pounds in the charge for stoppage in transit, it is argued by respondents that when the Wheeling & Lake Erie first established fabrication in transit in central freight association territory the charge was fixed at $1\frac{1}{2}$ cents per 100 pounds, not upon a careful consideration of costs, but with a view of not exceeding the charge which the plant at Ambridge paid for the haul of the unfabricated material from Pittsburgh, and that consequently no presumption of reasonableness should be based upon its mere continuation through the comparatively short period from December, 1908, to the present time. It is asserted in respondents' behalf that the costs of industrial switching involved in the performance of the transit service at the various points herein involved is greater than $1\frac{1}{2}$ cents per 100 pounds, and that, based upon the actual cost plus a reasonable profit, the proposed charge of $2\frac{1}{2}$ cents is proper. It is also urged that from the standpoint of the value to the shipper the charge of $2\frac{1}{2}$ cents is not unduly high.

The switching movements at interior fabricating points necessitated by transit are four: First, the movement of the loaded car into the fabricating point; second, the movement of the empty car out;

third, the movement of an empty car in to be loaded with fabricated material; and, fourth, the movement out of the car loaded with fabricated material. All of these movements are in addition to the line haul from roller mill to point of ultimate destination. Extensive exhibits showing cost figures for this additional service at Canton, Cleveland, Toledo, and Indianapolis were submitted by the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; at Indianapolis by the Cleveland, Cincinnati, Chicago & St. Louis Railway and the Lake Erie & Western Railroad; and at Martins Ferry, Mount Vernon, and Rankin by the Baltimore & Ohio Railroad. The cost figures for switching in Canton yards, as revised by the Pennsylvania Company to meet some of the criticisms of counsel for protestants and intervener, are as follows:

Operating expenses per loaded car placed, including return of empty--	\$2.7880
Taxes .....	.0296
Interest and depreciation .....	.6355
Total	3.4531

This covers the cost of bringing in the material to be fabricated and of taking out the empty car. It is multiplied by two to reach the complete cost to cover the additional service of setting in an empty and taking out the loaded car. The total is \$6.906. This was criticised on the ground that to some extent the car unloaded at the manufacturing plant may be loaded again without extra switching by the railroad company. It is estimated that 25 per cent of the cars brought in with material to be fabricated are thus reloaded, which would reduce by 12½ per cent the total cost estimate given above. In addition to the preceding total cost, the carriers claim a loss of five days' use of the car. This was first estimated at \$2.06 per day, being the gross freight earnings per car per day; but the estimate was later changed to 56½ cents per day, the estimated net earnings per car-day. The entire cost to the carrier of the transit service on this basis would be \$9.73, or with the original operating expense estimates, \$10.30.

The amount of the revised operating expenses, \$2.7880, is obviously not unreasonable when it is considered that this covers both an empty and a loaded movement. Half of this, or \$1.394, would seem not to be excessive for the total operating expense of handling a car in industrial work. Nor does the amount charged for taxes and interest seem to be excessive, since the total cost compared with the operating expense shows an operating ratio of 81.3 per cent. But there are at least two elements in the final result that are open to attack. As indicated above, some allowance should be made on account of reloading without additional switching. If the 12½ per cent reduction on this account is accepted as reasonable, the \$6.906 is

reduced to \$6.043. Furthermore, the sum which the car might have earned during the days it was detained should not have been added, because the cost of the estimated average detention of a car in all business has been previously included. Only in cases of unusual detention could any allowance on this account be claimed, and then only for the excess detention. Corrected in accordance with these suggestions, the figures presented for the Canton yards do not show costs which would justify an increase in the charge for the fabrication in transit service.

We will not give here a detailed consideration of the cost figures submitted for the other points. None of the roads use the same formula. In each case comparatively few items represent actual expenditures. They are in the main estimates and are arrived at by using variable factors.

Entirely independent of the cost figures, however, we believe the increase in the charge can not be justified. The purpose of transit is in part to effect an equalization in freight charges and to eliminate discrimination. The evidence shows that if the proposed increase is allowed to become effective interior fabricators will be at a serious disadvantage as compared with competitors in the Pittsburgh district and at rate-breaking points in western trunk line territory. Under existing rates the plant at Rankin has an advantage of 0.5 cents and those in the Chicago district of 1.5 cents per 100 pounds over the interior fabricator. If the proposed increase is allowed to become effective, their advantage will in each case be augmented by 1 cent per 100 pounds.

Rankin is located 8.9 miles via the Baltimore & Ohio, and 9 miles via the Pittsburgh & Lake Erie east of Pittsburgh, consequently necessitating a back haul in the movement from Pittsburgh via Rankin to points west of Pittsburgh. While Pittsburgh steel is not handled at Rankin under a transit arrangement, the number of switching movements in and out of the fabricating plant under the combination of the local of 1 cent Pittsburgh to Rankin plus the Pittsburgh rate to destination is exactly the same as under the transit arrangement at the interior fabricating points. The same is true of the movement in and out of fabricating plants in the Chicago district and in Cincinnati and St. Louis. In fact, the total number of switching movements in the entire haul from the roller mills to ultimate destination is in each instance exactly the same. Surely the cost of switching at interior fabricating points herein involved is in no instance greater than the cost of the haul from Pittsburgh roller mills to Rankin and of switching in Chicago, Cincinnati, and St. Louis. There is no justifying reason for a greater total freight charge from Pittsburgh roller mills to St. Paul for the fabricator at Toledo or any other interior point along the direct line than for those located

at Rankin or Chicago. This becomes still more apparent when we consider that there are only five or six roller mills which operate fabricating plants in conjunction with their mill. These shops are the only ones which by virtue of their location might be said to be entitled to a natural advantage in freight rates. The great bulk of the fabrication of structural iron and steel is done at shops not connected with roller mills, and at shops such as Rankin, which do not operate under fabrication in transit, and the service in addition to the line haul is the full equivalent of the additional service incident to transit. To Janesville, Madison, Beloit, Watertown, Jefferson, Wausau, and other Wisconsin points and to Winona, Minn., the combination of rates from Pittsburgh to Chicago and Chicago to destination equals the through rate from Pittsburgh and consequently in the movement to these points Chicago fabricating plants have the same advantage over interior fabricators in central freight association territory as in the movement to St. Paul. To many points west of Chicago the through rates from Pittsburgh are less than the combination on Chicago, and here Chicago fabricators are not at present at an advantage. We have, however, examined a number of tariffs of lines in western trunk line territory by the provisions of which Chicago will continue to enjoy transit at a charge of $1\frac{1}{2}$ cents under the through rates from the Pittsburgh district, except in the case of material coming to Chicago via the Pittsburgh, Cincinnati, Chicago & St. Louis Railway. If proposed increased charges are allowed to become effective, Chicago fabricators will be given the additional advantage over interior fabricators in central freight association territory of a lower total freight charge in the movement from Pittsburgh to points to which through rates are published lower than the combination via Chicago. Tariffs of Eugene Morris, agent, I. C. C. No. 419, and F. A. Leland, agent, I. C. C. No. 1014, provide for fabrication in transit at a charge of $1\frac{1}{2}$ cents under through rates from Pittsburgh to points in Oklahoma at St. Louis, Hannibal, Kansas City, Joplin, Springfield, and St. Joseph, Mo.; East St. Louis and Peoria, Ill.; Clinton, Ottumwa, Cedar Rapids, Des Moines, Waterloo, Newton, Fairfield, Atlantic, Centerville, and Council Bluffs, Iowa; Omaha, Nebr.; Atchison, Leavenworth, Argentine, Topeka, Wichita, Pittsburgh, and Iola, Kans.; Milwaukee, North Milwaukee, and Waukesha, Wis.; Memphis, Tenn., and New Orleans, La., and when in direct line of transit at any point in the states of Illinois, Iowa, Missouri, Oklahoma, or Kansas. Similarly, tariffs of Eugene Morris, agent, I. C. C. 361, and F. A. Leland, agent, I. C. C. 958, provide for fabrication in transit at a charge of $1\frac{1}{2}$ cents under through rates from Pittsburgh to points in Arkansas at St. Louis and Kansas City, Mo.; East St. Louis, Ill.; Memphis, Tenn.; Little Rock, Ark.; and, when in direct

line of transit, at Milwaukee, North Milwaukee, and Waukesha, Wis., and at any points in the states of Illinois, Iowa, Missouri, or Kansas. To both of these tariffs respondents are parties. It should be noted that the Wabash, which proposes to increase the transit charge to $2\frac{1}{2}$ cents at Attica and Lafayette, Ind.; Detroit, Mich.; and Toledo, Ohio, will, under prevailing tariffs, maintain transit at a charge of $1\frac{1}{2}$ cents at Decatur, East St. Louis, Hannibal, Jacksonville, and Springfield, Ill.; Des Moines and Ottumwa, Iowa; and St. Louis, Mo. Other tariffs in western trunk line territory which provide for transit at a charge of $1\frac{1}{2}$ cents at Chicago and points west thereof are Chicago, Burlington & Quincy tariff I. C. C. No. 10835 and Chicago, Rock Island & Pacific I. C. C. No. C-9556. Under existing tariffs Cincinnati has an advantage of $1\frac{1}{2}$ cents per 100 pounds over interior fabricating points in the movement from Pittsburgh to Louisiana points. Under the proposed tariffs of the Pennsylvania Company it will have this advantage to all points south of the Ohio River.

We have examined some of the transit tariffs of carriers in eastern trunk line territory and find that in many instances the charge is as low as 1 cent per 100 pounds, and is so maintained by the Delaware, Lackawanna & Western at Athenia, Boonton, Dover, and Paterson, N. J., and at Elmira, Elmira Heights, and Syracuse, N. Y., by the Erie Railroad at Elmira, N. Y., and Paterson, N. J., and by the Baltimore & Ohio at Baltimore, Md., and Arlington (Staten Island), N. Y. The Pennsylvania Railroad varies its charges at fabricating points along its line in eastern trunk line territory from 1 to 3 cents, dependent upon the point of origin of the material to be fabricated and the point of destination.

Structural steel moves long distances, and we must take into consideration the transit charges in the various sections of the country. The fundamental basis and chief justification of transit is the equalization of rates and the prevention of discriminations which could not otherwise be avoided. The rate comparisons which have been made show that an increase from $1\frac{1}{2}$ to $2\frac{1}{2}$ cents per 100 pounds in the charge for fabrication in transit can not be permitted to become effective if a substantial rate equality at fabricating points is to be maintained. Rather than permit a variance in the charge for stoppage in transit at the many fabricating points, it may be suggested that the additional expense incident to the service, if not at present adequately covered, be reflected in the general level of rates on the article which enjoys the service. It is stated by counsel for the intervener that while for 468 miles, the distance from Pittsburgh to Chicago, the average car revenue for the Pennsylvania lines on all commodities is \$62.83, it is \$109.78 for structural steel, and that the ton-mile rate

on all commodities is 5.71 mills, as compared with 8.33 mills on structural steel. It is alleged that structural steel bears a comparatively heavy proportion of the cost of transportation of carriers in central freight association territory. That, however, is not a matter here in issue.

We now come to the consideration of the rules and regulations in respondents' tariffs which govern the fabrication-in-transit service. As already indicated, not all of the tariffs under suspension change the rules. The protestants and intervener attack the rules and regulations on the ground that they are unjust, unreasonable, and discriminatory, in violation of sections 1 and 3; and indefinite and uncertain, in violation of section 6 of the act to regulate commerce, and of rule 10 (a) of our Tariff Circular 18-A. The attack centers upon the request that respondents publish a more inclusive list of iron and steel articles which may enter into the fabricated product, extend the time limit of transit, and, under proper cancellation of inbound billing, permit fabricators to substitute in the outbound movement steel originating on one line for a like commodity originating on another line, and steel coming from one rate territory for that coming from another. It is urged on behalf of respondents that the scope of fabrication in transit should not be extended to different articles or other processes than those now provided in their tariffs, and that it would be in violation of the law to permit substitution.

An examination of the tariff provisions at present in effect and those under suspension shows a lack of uniformity in regard to the articles upon which fabrication in transit is permitted. In addition to a specific list of articles which may be fabricated in transit, the tariffs of some of the respondents include by general provisions a large number of iron and steel articles not specifically named in the fabrication tariffs. Others confine the articles which may be fabricated to those specifically enumerated. At the hearings it was intimated by protestants that it would be desirable to have the transit service extended to include fabrication of structures other than bridges and buildings. As indicated in our discussion with regard to the propriety of fabrication in transit in general, we should not look with favor upon such an extension of the service unless it were clearly shown to be necessary to avoid discrimination, promote commerce, and for other proper and lawful purposes. We are in sympathy with the carriers' determination not to include additional processes in the fabrication provisions of their tariffs. However, in industries in which the service has been established it should be made inclusive enough to accomplish the purpose for which it is designed, freely and without unnecessary annoyances and restrictions. With that end in view, the list of articles in respondents' tariffs should be made to include all articles necessary for the fabrication of sections of

bridges and buildings. This list should be made uniform in the tariffs of all the respondents.

In tariffs at present in effect four of the respondents provide a time limit of 4 months within which to fabricate under the transit rate; ten provide 6 months, and one 12 months. In tariffs under suspension all but two carriers provide 6 months. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company provides 4 months and the Wheeling & Lake Erie 12 months. Our examination of fabrication tariffs of the lines in western trunk and eastern trunk line territories shows that in the former the time limit is uniformly one year, while in the latter the Delaware, Lackawanna & Western and the Erie Railroad provide one year, the Pennsylvania Railroad 6 months, and the Baltimore & Ohio 6 months and 4 months. This is another matter in which uniformity should be established. The evidence before us is insufficient for a definite finding in this regard.

In the matter of substitution we also find a lack of uniformity, both in the tariffs at present in effect and in those under suspension. Five of the respondents provide no specific rule governing substitution. Some publish only a general provision, to the effect that while the identity of each carload can not be expected to be preserved, substitution which impairs the integrity of the rate is not permitted. Several of the carriers simply reproduce rule 76 of the Commission's Tariff Circular 18-A. This rule has subsequently been withdrawn. The Wabash Railroad after reproducing rule 76 provides:

It is not expected that the identity of each carload of transit commodity can or will be preserved during the process of fabrication, but it will not be permissible to make any substitution that will impair the integrity of the through rate.

To this the Wheeling & Lake Erie adds the following:

Substitution, however, is not accomplished when the fabricated materials are combined at the fabricating point and inbound paid bills covering carloads of unfabricated material entering the combination are surrendered in the aggregate in the same ratio as was observed in the fabrication.

The Erie Railroad provides no specific rule in the present or proposed tariffs at Rochester, Ind., but at Greenville, Pa., provision is made in both the present and proposed tariffs in part as follows:

On mixed carload shipments of structural iron or steel originating in the same or different rate territories the inbound billing covering the carload shipments entering into the mixed shipment must be surrendered in the same ratio as was observed in the mixed shipment and the through rate applied from point of origin shown on the inbound billing surrendered to destination.

The Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company have no specific rule with regard to substitution in the tariffs at present in effect, but in those under

suspension provide that transit shall apply only on iron and steel moving into and out of the fabricating point via routes described in the tariff and "that it will not be permissible to substitute tonnage originating in one rate territory for a like tonnage from another territory or to make any substitution that would impair the integrity of the through rate." The latter is the most stringent of the rules in the tariffs under consideration. While some of the carriers permit substitution of structural steel which comes from the same rate territory via another line, the Pennsylvania Company is the only one which restricts the substitution to its own line.

An examination of the tariffs shows that the carriers in western trunk line territory do not prohibit substitution of material coming from lines other than the one upon which the fabricated steel is forwarded to destination, and that the Chicago, Burlington & Quincy even goes so far as to specifically provide for the substitution of steel coming from different points. Its transit tariff reads as follows:

The identity of structural iron or steel unloaded in a warehouse, storeroom, or at a manufacturing plant can not be preserved, and the integrity of through rates being preserved, by the requirement as to the surrender of inbound freight bills, verification of records of receipts and shipments by authorized representatives of the railroads and daily cancellation of freight bills covering local sales, it is not required, under these rules, that structural iron or steel originating at one point will be kept separate from that originating at other points.

In eastern trunk line territory we find that the Delaware, Lackawanna & Western and the Erie Railroad do not require identity to be preserved, but do not permit substitution that will impair the integrity of the rate. They provide further that—

the tonnage arriving via another line will be treated as transit tonnage if it originated at and the fabricated commodity is destined to points which would entitle it to the transit privilege if it had arrived at transit point via the Delaware, Lackawanna & Western Railroad.

The Pennsylvania Railroad and the Baltimore & Ohio at points on their lines in eastern trunk line territory provide as follows:

It will not be permissible at the fabricating point to forward on basis above outlined commodity that did not move into fabrication point on this basis or to substitute articles originating in one territory for the same or like commodity from another territory, or to make any substitution that would impair the integrity of the through rate.

The matter of substitution of tonnage in transit was before us in the *Transit case*, 26 I. C. C., 204. In that case an examination was made of the entire subject of transit on all commodities, and the relation between transit as practiced and transit as published in the tariffs was considered. Rule 76 of Tariff Circular 18-A was then in effect and the carriers and shippers who appeared before us in that

case united in asking that this rule be withdrawn. On page 210 of the opinion the following language was used:

The Commission has been assured, both on behalf of the carriers and the shippers, that the carriers can lawfully publish tariffs specifically permitting substitutions in so many words, and that in the absence of a showing that they are unreasonable, or unjustly discriminatory, or unduly preferential, they are entirely proper, and, as we are told, no harm is done. The proposed amendments to rule 76 are drawn with this idea in mind. Upon careful consideration of the whole matter it is our conclusion that we should accede to the request that rule 76 be canceled.

Accordingly an order was entered withdrawing conference rules 181, 203, and rule 76 of the tariff circular.

Little or no attempt has been made by respondents to define what is and what is not proper substitution. To a large extent fabricators have been left with the generalization that no substitution is permissible which "impairs the integrity of the rate" as their only guide. While the cooperation of the fabricators is required in policing and safeguarding transit, upon the respondents devolves the duty of giving their fabrication-in-transit tariffs that precision which will make them definite and certain and lawful. Rule 10(a) of our Tariff Circular 18-A reads as follows:

Each carrier shall publish, with proper I. C. C. numbers, post, and file separate tariffs, which shall contain in clear, plain, and specific form and terms all the terminal charges and all allowances, such as arbitraries, switching, icing, storage, elevation, diversion, reconsignment, transit privileges, and car service, together with all other privileges, charges, and rules, which in any way increase or decrease the amount to be paid on any shipment as stated in the tariff which contains the rate applicable to such shipment, or which increase or decrease the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith, and shall also state whether or not the rate published by the initial carrier from the point of origin to ultimate destination will apply. If the through rate does apply it must be as of the date of shipment from point of origin.

If such privilege is granted or charge is made in connection with the rate under which the shipment moves from point of origin, the initial carrier's tariff which contains such rate must also show the privilege or the charge or must state that shipments thereunder are entitled to such privilege and subject to such charges according to the tariffs of the carriers granting the privileges or performing the services, as "lawfully on file with the Interstate Commerce Commission."

Respondents should revise their fabrication tariffs in conformity with the above rule.

The subject of substitution requires brief additional comment. The testimony shows that structural iron and steel are manufactured in a great number of forms and sizes; that each particular size or form must be manufactured separately; and that the different sizes are manufactured or rolled at different plants. The steel can not be

Then these notes follow:

The fabricator shall keep his records so that the carriers or government officials can at any time ascertain the following:

Total tonnage moving into industry over the various roads.

Total tonnage purchased locally, if any.

Total output of plant, divided as follows:

Used locally.

Shipped, upon which fabrication privilege has been exercised.

Shipped, upon which no fabrication privilege has been exercised.

The idea in my mind was that one of these accounts ought to approximately balance the other, and if an honest effort were made to keep these accounts clearly and straightforward, a carrier could, without any material expense, come into a fabricator's plant, ask for this account, and see it and verify it. An account should be made under oath, of course, and our affidavit taken, or anything to satisfy the interested parties, that, by inspection, a clever auditor could tell whether the privilege had been constantly abused or abused to such an extent as would violate the spirit.

It was testified by the assistant general freight agent of the Erie Railroad that such a system of accounting would give the carriers the entire revenue to which they are entitled under the through rates, and that the only substantial danger under it would be the substitution of material produced at the fabrication point.

Considering all the testimony, we believe that the protestants and intervenor are correct in their assertion that unless substitution is allowed they will not be able to lawfully take advantage of the fabrication-in-transit service. Under the circumstances of this case, respondents should change their transit rules and regulations so as to specifically provide for substitution of material drawn from the lines of different carriers and different rate territories. They should further provide proper accounting and provisions for the cancellation of inbound billing to cover outbound shipments, local consumption, waste or shrinkage; frequent checking of unfabricated and fabricated material and billing on hand; and the cancellation of billing in excess of the fabricated and unfabricated material on hand, requiring the use of the oldest billing for that purpose. These rules should be made uniform in respondents' tariffs. We submit the outline proposed by protestants for the careful consideration of respondents. All of these things should be planned and executed with such deliberation and care as will avoid the creation of other unjust discriminations, and with such a degree of supervision and effective policing that resort to unlawful practices may be impossible.

An order will be entered requiring respondents to cancel the tariffs under suspension, and to maintain for the statutory period the present charge of 1½ cents per 100 pounds as a maximum at the fabrication-in-transit points involved in this proceeding.

Commissioner. dissents.

determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee * * *. No carrier, unless otherwise provided in this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff, filed and in effect at the time, nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

Under these provisions of the act it would be unlawful for a common carrier to allow a shipper in the transportation of a commodity from point of origin to point of destination, interruption involving loss of identity of the commodity transported or substitution of one commodity for another of like quantity from a different rate point without clearly and comprehensively specifying in the published schedules of the tariffs the right to lose identity or to make substitution. Taken collectively, the rate, the transit service specified, and the regulations governing it are a unit, representing definite duties and obligations.

The following outline was submitted by protestants to show what, in their estimation, would be a proper system of accounts to be kept by the fabricator under rules which permit substitution:

An account shall be kept with each railroad serving the fabricator.

This account must show:

1. Tonnage received daily from each source of origin.
2. Tonnage shipped daily over this road and destination of same, these shipments to apply against the oldest surrendered expense bill in force at time of shipment.
3. Monthly cancellation of tonnage. (This to be determined by taking the total output sold for local use and prorating same over roads serving industry in proportion to the tonnage received over said road for like period.)
This presupposes that the fabricator interested shall have a similar account with all the roads serving him, of course.
4. Monthly cancellation to cover waste or shrinkage. (This to be a percentage upon inbound materials which can be agreed upon as reasonable.)
I did not attempt to put in any percentage there, but it must be a reasonable one and one agreeable to all parties.
5. Monthly cancellations of tonnage shipped upon which transit privilege was not exercised.
6. It shall be permissible and lawful for fabricator to make shipment over this road against such balances as are shown by above-described account, irrespective of origin of materials.

Then these notes follow:

The fabricator shall keep his records so that the carriers or government officials can at any time ascertain the following:

Total tonnage moving into industry over the various roads.

Total tonnage purchased locally, if any.

Total output of plant, divided as follows:

Used locally.

Shipped, upon which fabrication privilege has been exercised.

Shipped, upon which no fabrication privilege has been exercised.

The idea in my mind was that one of these accounts ought to approximately balance the other, and if an honest effort were made to keep these accounts clearly and straightforward, a carrier could, without any material expense, come into a fabricator's plant, ask for this account, and see it and verify it. An account should be made under oath, of course, and our affidavit taken, or anything to satisfy the interested parties, that, by inspection, a clever auditor could tell whether the privilege had been constantly abused or abused to such an extent as would violate the spirit.

It was testified by the assistant general freight agent of the Erie Railroad that such a system of accounting would give the carriers the entire revenue to which they are entitled under the through rates, and that the only substantial danger under it would be the substitution of material produced at the fabrication point.

Considering all the testimony, we believe that the protestants and intervener are correct in their assertion that unless substitution is allowed they will not be able to lawfully take advantage of the fabrication-in-transit service. Under the circumstances of this case, respondents should change their transit rules and regulations so as to specifically provide for substitution of material drawn from the lines of different carriers and different rate territories. They should further provide proper accounting and provisions for the cancellation of inbound billing to cover outbound shipments, local consumption, waste or shrinkage; frequent checking of unfabricated and fabricated material and billing on hand; and the cancellation of billing in excess of the fabricated and unfabricated material on hand, requiring the use of the oldest billing for that purpose. These rules should be made uniform in respondents' tariffs. We submit the outline proposed by protestants for the careful consideration of respondents. All of these things should be planned and executed with such deliberation and care as will avoid the creation of other unjust discriminations, and with such a degree of supervision and effective policing that resort to unlawful practices may be impossible.

An order will be entered requiring respondents to cancel the tariffs under suspension, and to maintain for the statutory period the present charge of 1½ cents per 100 pounds as a maximum at the fabrication-in-transit points involved in this proceeding.

HARLAN, Commissioner, dissents.

29 I. C. C.

No. 5524.
NEW YORK HAY EXCHANGE ASSOCIATION
v.
LEHIGH VALLEY RAILROAD COMPANY.

Submitted December 6, 1913. Decided January 6, 1914.

1. Unlawful demurrage charges found to have been assessed upon certain car-load shipments of hay held by defendant at Jersey City, N. J.
2. Embargo notices of the kind here in question should be posted at the terminal to which they apply.

Coffin & Goldmark for complainant.
Stewart C. Pratt for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an incorporated association, the members of which are individuals, firms, and corporations engaged in New York, N. Y., as wholesale dealers in hay and straw. By complaint, filed February 7, 1913, complainant sought various forms of relief against certain alleged practices of defendant with respect to the enforcement of embargoes on shipments of hay consigned to New York. Certain of the allegations of the complaint, however, were not referred to at the hearing; and from the testimony, as well as from complainant's brief, it would appear that the complaint will be satisfied if complainant's members are awarded reparation on account of the assessment of certain demurrage charges which are alleged to have been unlawful, and if defendant is required for the future to post copies of embargo notices at stations in New York against which an embargo is placed.

On December 26, 1912, defendant issued the following embargo notice to all of its connections:

Embargo 1679. Until further notice, this company will decline to accept shipments of hay for all consignees consigned to or intended for delivery at pier 68, New York. Restriction placed account accumulation. We will accept shipments billed up to and including December 27. Please be governed accordingly.

This embargo was canceled January 24, 1913. On December 31, 1912, defendant issued another embargo notice to all of its connections, which read as follows:

Embargo 1686. Account of accumulation, embargo is hereby placed by this company on shipments of hay from all points for all consignees consigned to or intended for Brooklyn eastern district terminal, Brooklyn, N. Y. Shipments will be accepted billed up to and including January 1, 1913.

This embargo was canceled January 21, 1913.

These embargo notices were not posted at stations to which they applied. It was not until January 7, 1913, that complainant's secretary, after request therefor, received from defendant copies of the embargo notices. Complainant admits that defendant was justified in placing the embargoes and does not seriously urge that the embargoes were continued for an unreasonable length of time.

The gist of the complaint, as indicated by the testimony, is that demurrage charges were assessed upon a number of cars held by defendant at its Jersey City terminals on account of the embargo, although the cars on which such demurrage charges were assessed had been forwarded from various points of origin prior to the dates named in the embargo notices.

Pier 66, hereinafter referred to as the pier, is one of defendant's terminal stations in New York Harbor, and the greater part of defendant's hay traffic to New York City is handled over that pier. The Brooklyn eastern district terminal, hereinafter referred to as the terminal, is on the East River, in Brooklyn, and extends from North Fourth to North Tenth streets. It is used as a terminal by various trunk line carriers, as well as defendant.

The pier and the terminal are within the free lighterage and floatage limits of New York Harbor. Hay in carloads consigned to New York Harbor or to Jersey City, lighterage free, in the absence of embargoes, could have been forwarded without additional charge to the pier or the terminal.

From December 11 to December 31, 1912, both inclusive, numerous carloads of hay were shipped from various points of origin to certain named members of the complainant association at Jersey City, for delivery to points within the lighterage limits of New York Harbor. Originally the cars were not consigned to a specific point within the harbor, but to "New York, lighterage free," "New York Harbor," or "Jersey City, lighterage free."

Defendant's tariffs contained the following rule relating to hay consigned to New York as to which no specific terminal delivery is shown in the billing:

All hay for New York, N. Y., Brooklyn, N. Y., or Jersey City, unless consigned direct to the final delivery * * * station will be held at Jersey City terminal, N. J., awaiting delivery or forwarding orders, subject to car service and embargo restrictions.

Defendant's demurrage rules provide that—

Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to these demurrage rules. and that—

Twenty-four hours' (one day) free time will be allowed * * * when cars are held for reconsignment or reshipment in same car received.

Cars held at the Jersey City terminal, billed to New York Harbor, can be reconsigned to points on the Long Island Railroad or to points in New England via the Harlem River, N. Y.

With respect to the cars above mentioned, billed from points of origin to New York Harbor prior to the entry of the embargo orders, and which reached the Jersey City terminal while the embargoes were in force, defendant notified consignees of arrival and were directed to deliver the cars to the pier or the terminal. Notwithstanding these orders, the cars were held during the life of the embargo at defendant's Jersey City terminal and demurrage charges were assessed thereon. During the life of the embargo against the pier, cars which had been billed direct to the pier before the effective date of the embargo were moved to that point; and cars billed to New York Harbor, without specific delivery instructions, prior to the effective date of the embargo, and as to which orders had been given by consignees for delivery to the pier prior to the effective date of the embargo, were forwarded to the pier during the continuance of the embargo. During the embargo against the terminal cars consigned direct to the terminal, or as to which defendant had received orders for delivery at the terminal prior to the effective date of the embargo, or which were on hand at the Jersey City terminal on the effective date of the embargo, were delivered to the terminal.

Both embargoes provided that shipments "billed up to and including" certain specific dates would be accepted. The customary meaning of the word "billed" is waybilled at point of origin. Certainly it would be an unwarranted construction of that word to hold that it means "received at Jersey City terminals up to and including" specific dates. Therefore we are of opinion that the embargoes were not applicable to cars which were waybilled from points of origin prior to the specific dates named in the notices; that defendant was not justified in holding such cars at its Jersey City terminal and collecting demurrage charges thereon after the dates when orders for delivery thereof at the pier or the terminal were received by it from complainant's members; and that the collection of demurrage charges in such instances constituted overcharges above the published tariff rate. It appears, however, that the members of complainant association sold the hay on commission for the shippers, paid the demurrage, and charged same back to the shippers. In the sale of the hay they were the agents for the shippers and in no case suffered any loss on account of the collection of the demurrage charges by defendant. Consequently no award of reparation may be made to the members of the complainant association. The shippers, by whom these demurrage charges were ultimately borne, are not parties complainant. But inasmuch as the demurrage charges, to the extent that

they have been here found to have been unlawful, were overcharges above the published tariff rate, refund thereof may be made to the shippers without the entry of an order by this Commission.

The foregoing disposes of all the contentions seriously urged by complainant, except its request that copies of embargo notices be posted at the embargoed terminals. We are of opinion that such a practice is reasonable and should be followed by the defendant in the future. In cases where it is possible to do so such notices should be posted in advance of the effective date of the embargo. In cases where on account of physical conditions advance notices of an embargo can not be given, there would appear to be no reason why notice thereof may not be posted at the terminal at the same time that it is served upon defendant's connections. No specific order in this respect will be entered at the present time, but if the suggestions here made are not complied with complainant may have this proceeding reopened for the entry of such an order as may be appropriate.

29 I. C. C.

Nos. 698-707 (Sub-No. 70).

EASTMAN, GARDINER & COMPANY ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted February 26, 1912. Decided January 6, 1914.

This complaint involves the last of the reparation claims that were filed with the Commission following its decision in the *Tift* and *Central Yellow Pine Association* cases, which involved rates on yellow-pine lumber from southeastern producing territory when consigned to the Ohio River locally, and for beyond. All the other claims, several hundred in number, were paid by the carriers on basis of 67 cents on the dollar under a compromise agreement entered into between carriers and claimants and approved by this Commission upon request of both parties. The issue here is whether this claimant, with the others, accepted that agreement; *Held*, That defendants are justified in their contention that claimant did, by his actions, personally and through his attorney, accept the agreement, at least impliedly. As we assume that claimant stands ready to do what is equitable under the circumstances, as viewed by the Commission, and that he will accept the amount tendered upon this expression of its views, no further findings or order are deemed to be necessary in the case.

Victor H. Wallace for complainant.

Merrel P. Callaway for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint involves a claim for reparation arising out of the *Tift* and *Central Yellow Pine Association* cases, in which, in 1905, the Commission condemned as unreasonable an increase of 2 cents per 100 pounds in the rate on yellow-pine lumber from producing territory south of the Ohio and east of the Mississippi rivers when consigned to the Ohio River locally or for beyond. The claim is one of several hundred of identical character that were filed by shippers with the Commission following the affirmance by the Supreme Court of the Commission's findings, in 1907. 10 I. C. C., 548 and 505; 206 U. S., 428 and 441.

When these claims were filed many of the difficulties in their final checking and disposition were looked upon as being practically insurmountable if each claim was compelled to be prosecuted separately and fully proved against each carrier in the through route of each shipment. Thousands of carloads were involved and they moved between numerous points of origin and destination and via various

routes. Many shippers had lost their expense bills and kept in addition imperfect accounts between the dates of their shipments, which dated back as far as 1903, and the final decision of the Supreme Court. There were also conflicting claims for the reparation on specific shipments, due to the character of the contracts under which the lumber was sold and perhaps for other causes. There were also numerous other complications, and the carriers, recognizing equally with the shippers the stupendous undertaking incident to the final proof of shipments and being themselves equally anxious to dispose of the question of reparation with the least practicable delay, therefore sought to cooperate with the various claimants or their attorneys in an effort to find some method of settlement of these claims by wholesale; and finally after extended negotiations the carriers agreed to pay, upon ratification of the proposal by 85 per cent of the claimants, 67 cents on the dollar in full satisfaction of all provable claims, upon consideration of the carriers furnishing the machinery of proof with the minimum of cost in that respect to the shippers. To carry out this plan the carriers therefore established, one each at Washington, D. C., Macon, Ga., and New Orleans, La., what they aptly termed clearing houses, which were conducted at considerable expense by them. As the shipments were finally checked the carriers and claimants asked the Commission to approve the various settlements, and this the Commission did in so far as to say that, in its view, the settlements proposed were not in violation of law. *Joice & Co. v. I. C. R. R. Co.*, 15 I. C. C., 239; *Jenks Lumber Co. v. S. Ry. Co.*, 17 I. C. C., 58.

The complainant herein, the Tatum Lumber Company, whose claim is docketed as Sub-No. 70 of the general docket Nos. 698-707 covering these claims, was one of the shippers under the increased rate which the Commission condemned. The Tatum Lumber Company is not a corporation; it is the trade name of W. S. F. Tatum, an extensive dealer in lumber, who will be referred to herein as claimant. His claim, which is for \$1,318.09, was originally presented through Green & Green, attorneys, of Jackson, Miss., who represented a large number of these claimants before the clearing house at Macon, Ga., and was prosecuted by them up to the final point of tender by the clearing house of \$883.13, representing the 67 per cent of the face amount. The record seems clearly to indicate that Green & Green proceeded in this matter with the full knowledge of Mr. Tatum and that this understanding continued on their part to the point of final tender of the above-named sum. They were then advised by him that settlement would be accepted only on the basis of the full 100 cents on the dollar. Green & Green thereupon withdrew from the case, and claimant is now being represented by other counsel.

There is no difference of opinion between claimant and the carriers with respect to what the question is that is here presented for decision. Defendants do not deny the fact that the shipments moved under the rates found by the Commission to be unreasonable or the validity of the claim based thereon, and they now stand ready again to make the compromise offer of 67 per cent of this claim. The one contention raised by them is that claimant, both through his attorneys and by his own actions, accepted this compromise agreement, and that he is thereby estopped to demand the full face value of his claim. Attention is invited by them in this connection to certain correspondence had between claimant, his former attorneys, Green & Green, and the Macon clearing house, filed as a part of this record, which they claim tends under any reasonable interpretation to establish their contention, particularly a letter from the manager of the Macon clearing house to claimant, dated November 22, 1909.

A representative of your company came to the clearing house some time ago in reference to submitting proof of your claim. He was to return later with this proof. Will you kindly let us have this at once, and oblige?

I also note that while you are marked as having accepted the agreement of settlement, we do not find your written acceptance in our files. Will you please let your attorneys, Messrs. Green & Green, have this acceptance at once, so that they may send it in to us, if you have not already done so?

and his reply thereto, of November 24, 1909:

We have yours of the 22d instant, and in reply would state that we are pressing the matter of proofs on our claim all we can, and expect within the next week or ten days to be able to report in full.

We note your remarks as to our written acceptance, and would state that we have furnished the attorneys, Messrs. Green & Green, several powers of attorney, but they now seem to want an additional one that gives them more authority as to the throwing out of any portion of our claim than we like to give them, and we are debating this question. When we come to check over our proof with you, will sign such agreement as is necessary to complete the clearing-house record.

It appears that claimant's original expense bills had been lost by him by fire, and that he and his son in person checked his shipments with the clearing-house employees from his ledger entries in January, 1910. This, defendants contend, could have been done by claimant only upon his full acceptance of the compromise settlement, and it would not, they state, have been permitted by them except upon that understanding. Neither Green & Green nor the manager of the Macon clearing house was specifically advised by claimant that the compromise settlement would not be accepted by him until after this final check, in April, 1910.

The question immediately arises whether this question of whether claimant did in fact accept the compromise agreement and if so the legal effect of that acceptance is one which it is within the jurisdiction of this Commission to finally dispose of, or is instead more

a judicial question arising from a contract collateral to the issues the Commission can decide and is therefore cognizable only in the courts. It may be, in view of the limitations upon the Commission's jurisdiction and authority, that under a literal construction of the law it could not properly do otherwise than to award to claimant the full amount of any ascertained damage to him, leaving him and the carriers to contest in the courts any collateral question arising from the alleged agreement. We do not, however, think it necessary to finally pass upon this question at this time. There is, we think, a broader equitable aspect to the complaint. The carriers have proceeded in entire good faith, at much expense, in the vast work incident to final proof and disposition of these claims. All the others of the claims that have been settled, amounting to several hundred thousand dollars, have been adjusted on the compromise basis. The establishment of proof as to routing and as to the other questions referred to, in the detail necessary to a valid order by this Commission for reparation, would have been extremely difficult, if not in many cases wholly impracticable, if undertaken by the shippers without the aid of this cooperation on the part of the carriers. The carriers further, in order to facilitate matters, did not hold claimants to the strictest accountability as to every detail of proof, and gave them, in addition, the benefit in many cases of the Commission's findings in the specific rates before it upon certain shipments not technically covered by its order, such as on some shipments that were billed to points south of the Ohio River. The present claimant, along with the others, received the full benefit of this general cooperation on the part of the defendant lines through these clearing houses, and he should, we think, deal with this matter in the light of the whole situation. We do not mean to suggest that claimant should in any sense be asked or expected to accept less than the full amount of his claim because other shippers, regardless of their number, have seen fit to do so, and we have not suggested this in connection with any of these claims, and the approval which we gave to the general settlements referred to was only given upon request of all the parties, claimants and carriers. We think, however, that the evidence in connection with this case is convincing that claimant did assent to this compromise basis of settlement, at least impliedly, and there seems to be no doubt that his former attorneys proceeded upon that understanding.

There have been intimations by defendants and by claimant's former attorneys of bad faith on claimant's part in connection with this claim. We shall not attribute bad faith to him. He is wholly within his legal rights in presenting this matter to the Commission, and we

assume that he stands ready to abide by its decision as to what is the equitable course for him to pursue in the matter under all the circumstances.

Considering all the facts, circumstances, and conditions appearing, we reach the conclusion that defendants were justified in acting upon the assumption that claimant, by the course he pursued in the handling of this claim with the clearing house, personally and by his former attorneys, agreed to this compromise basis of settlement the same as did the other claimants under the decisions referred to. His claim is the only remaining one of the vast number presented that has not been adjusted, and it is highly desirable that in its disposition there be no discrimination in the amount received by him, in order that the other claimants may not have cause to feel that they have been discriminated against and that had they, too, waited they might have received the full amounts of their claims. We therefore think that complainant should accept this compromise sum in full satisfaction of the amount due him. But we make this suggestion, as stated, not because we think that he should be called upon to relinquish claim to any part of the amount due him, either as a matter of expediency in the general settlement of this matter or for other cause under ordinary circumstances, but we make it solely because of the exceptional circumstances of this case and of what we think might reasonably be construed to be the implied acceptance of this compromise by claimant, even if his actions in connection with his claim were not intended by him to be so construed.

We understand that the carriers now stand ready to tender the 67 per cent of this claim, and in the full belief that claimant will, under the circumstances, accept this tender it will be unnecessary for the Commission to make further findings or any order in the case. Upon such tender by the carriers the case should be considered as closed.

No. 5834.

E. DANCIGER

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

No. 5834 (Sub-No. 1).

SAME

v.

ERIE RAILROAD COMPANY ET AL.

Submitted October 1, 1913. Decided January 6, 1914.

Rate charged for the transportation of a carload of damaged overalls and a carload of damaged gloves from Dayton, Ohio, to Superior, Wis., not found to have been unreasonable. Complaints dismissed.

J. A. Little for complainant.

A. H. Lossow for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the general merchandise business at Superior, Wis. By two complaints, filed June 5, 1913, she alleges that she was charged an unreasonable rate for the transportation of a carload of damaged overalls and a carload of damaged gloves from Dayton, Ohio, to Superior, Wis. Reparation is asked.

The shipments described in the complaints moved in April, 1913. The car of overalls moved via the Pittsburgh, Cincinnati, Chicago & St. Louis and the Minneapolis, St. Paul & Sault Ste. Marie railways, and the car of gloves moved via the Erie Railroad, the Chicago & Erie Railroad, and the Minneapolis, St. Paul & Sault Ste. Marie Railway. Freight charges were collected on the two shipments in the sum of \$554.19, based on the first-class rate of 91 cents per 100 pounds. Complainant contends that 45 cents per 100 pounds would have been a just and reasonable rate.

The goods were water-soaked and muddy, caused by the then recent floods at Dayton, and were purchased by complainant at greatly-reduced prices. The laundries at Dayton could not promptly cleanse and fit them for the market, and complainant's manager "took his chances" on shipping them to Superior, where they were laundered.

Three-fourths of the overalls and two-thirds of the gloves were thus made salable for the purposes for which they were manufactured. There was no published commodity rate applicable to damaged goods from and to the points in question. The shipments were not inspected or sorted until after their arrival at Superior, and their exact condition when shipped can not be determined.

Complainant compares the rate charged with rates on various other commodities from Dayton and other points in Ohio and West Virginia to Superior and other Wisconsin points. None of the commodities referred to, however, with the exception of clothing, is analogous to the commodities here involved to such a degree as to make the comparison of value. Comparison is also made with the carload rates and minima applicable to shipments of certain articles of relatively higher value from Dayton and other points in Ohio and West Virginia to Superior. But the articles named are not analogous to those here in question, and the comparison is without value except as tending to support complainant's contention that value should be regarded as the controlling element in rate making.

Defendants aver that the rates charged were not unreasonable for the service rendered. In *Minneapolis Traffic Asso. v. C. & N. W. Ry. Co.*, 23 I. C. C., 432, 437, we said:

We are not prepared to lay down the principle that old and secondhand articles must be treated differently from new, or that value is the controlling element in making rates. Such of these articles or parts as are in fact scrap are entitled to the scrap rate, but if they have any value as the articles which they originally purported to be, we do not feel that we can require the carriers to transport them at other than the regular tariff rates applicable to the new or originally transported article.

There is no fixed standard by which the value of commodities like these here under consideration can be satisfactorily determined, and it would be difficult to establish a rate such as complainant asks without affording an easy and convenient means for misbilling and discrimination.

Upon all the facts of record, we are not convinced that the rate charged on the shipments in question was unreasonable. An order will be entered dismissing the complaints.

29 I. C. C.

No. 5594.

GEORGE M. LEE

v.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

Submitted June 14, 1913. Decided January 6, 1914.

Charges collected by defendant for the transportation of a mixed carload of hogs and cattle from Bradley, Ark., to East St. Louis, Ill., found unreasonable. Reparation awarded.

William F. McKnight for complainant.

E. A. Haid for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, at the time the shipment here in controversy was made, resided at Bradley, Ark. In his complaint, filed March 3, 1913, he alleges that defendant collected unreasonable charges for the transportation of a mixed carload of live stock, consisting of 16 hogs weighing 3,420 pounds, and 21 head of cattle weighing 13,090 pounds, from Bradley to East St. Louis, Ill. Reparation is asked. The claim was first filed with the Commission October 28, 1912.

The shipment described in the complaint was forwarded from Bradley on February 14, 1911, and charges were collected thereon in the sum of \$134.35 at the carload rates and minimum weights provided for the two classes of live stock contained in the shipment, including a charge of \$3 for feeding and bedding, which is not here involved. Complainant alleges that the charges collected were unreasonable to the extent that they exceeded charges that would have accrued at the carload rate on the highest-rated animals in the shipment based on the highest carload minimum weight.

The tariff of defendant in effect at the time the shipment in question was made contained the following provision:

A. Mixed carloads of live stock will not be accepted for shipment except as specifically provided below, and then only at owner's risk of injury resulting from such mixture.

Each species of stock (except horses and mules) must be separated by a partition strong enough to keep them separated during the journey, such partition to be placed in the car by the shipper at his expense.

B. The following mixed carloads of live stock will be accepted at the ratings shown below, subject to conditions outlined in section "A."

Horses and mules will take horse rate and minimum weight.

Horses, mules, and cattle will take horse rate and minimum weight.

Sheep and goats will take sheep rate and sheep minimum weight.

Calves, hogs, goats, and sheep will take the highest rate and minimum weight applicable on any of the species when shipped in straight carloads.

In no case shall the charge for a car of mixed live stock be less than would be charged for a car of the same length loaded with cattle.

It will be noted that no provision is made for a mixture of cattle and hogs, and that under the tariffs such a mixed carload could not be accepted for transportation. Nevertheless the mixed carload of hogs and cattle tendered by complainant was transported by defendant, and the evidence shows that the stock were delivered without injury at destination.

The Commission has several times held that where a carrier has accepted and transported a shipment for which no tariff rate was on file, nevertheless we should allow the carrier a reasonable transportation charge. In all these cases, however, failure to have a tariff on file has been an inadvertence. In this case such is not the fact. Here tariffs are on file in great detail covering shipments of live stock. These tariffs provide for certain mixtures, and it is evident that they intentionally exclude the mixture which was actually shipped. We do not think that in such a case we ought to impose a rate not specified in the tariff, and therefore that we must either deny reparation or hold the present tariff unreasonable.

This shipment was received without demur by the carrier, and was transported without damage to destination. This strongly indicates that such mixtures can properly be handled. We are of opinion that the schedule of the defendants is unreasonable in this respect, that it should be modified for the future, and that reparation should be granted accordingly.

These animals were separated by a partition in the car. The Commission is of opinion that the defendants may properly provide that in case of mixtures like this the shipper shall, at his own expense, put into the car a separating partition, if the carriers think necessary to protect themselves by such a provision.

In this instance we do not disturb the rule of the carrier that the rate applicable to a mixed shipment shall be the highest rate and highest minimum, but neither do we affirmatively approve that rule.

In this case one carload was hauled, and the aggregate weight of the shipment was but 17,410 pounds, while the minimum provided in the tariff for a carload of cattle was 22,000 pounds. Under the circumstances of this case we are of the opinion that the charges collected of complainant were unreasonable to the extent that they exceeded the charges that would have accrued had the cattle rate of

31½ cents per 100 pounds and minimum applicable thereto been applied to the shipment. We find that complainant made the shipment above described and paid unreasonable charges thereon; that he was damaged thereby; and that he is entitled to an award of reparation in the sum of \$62.05, which is the difference between the amount he did pay and the amount he would have paid had the charges been based on the cattle rate and minimum, with interest from March 15, 1911.

An order will be entered awarding reparation in the amount claimed, and prescribing for the future a rule in accordance with our conclusions herein.

No. 5120.

B. MAIER & COMPANY

v.

SOUTHERN PACIFIC COMPANY.

FOURTH SECTION APPLICATIONS NOS. 1118 AND 1161.

Submitted May 31, 1913. Decided January 6, 1914.

Rate of 90 cents per 100 pounds for the transportation of sugar in carloads from Los Angeles and Los Alamitos, Cal., to Benson, Ariz., found unreasonable and in violation of the fourth section of the act, as amended June 18, 1910. Application for relief from the provisions of the fourth section of the act denied.

J. C. Keen for complainants.

F. A. Jones for Arizona Corporation Commission, intervener.

J. G. Wilson, H. C. Booth, and C. W. Durbrow for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, Leopold Maier, Bernhard Maier, and Henry Waktor, are partners engaged in the general mercantile business at Benson, Ariz. By complaint, filed August 24, 1912, they allege that the defendant's rate of 90 cents per 100 pounds for the transportation of sugar in carloads from Los Angeles and Los Alamitos, Cal., to Benson, is unreasonable and in contravention of the provisions of the fourth section of the act to regulate commerce, as amended June 18, 1910. Reparation is asked. At the hearing the Arizona Corporation Commission intervened on behalf of complainants:

29 I. C. C.

Benson is on the line of the Southern Pacific Company in the southeastern part of Arizona, 551 miles from Los Angeles and 587 miles from Los Alamitos. The rate on sugar from Los Angeles and Los Alamitos to Benson and other stations on the line of the Southern Pacific Company east of Kim, Ariz., and west of El Paso, Tex., was at the time of the movement of the shipments with respect to which reparation is asked, 90 cents per 100 pounds, minimum weight 36,000 pounds; while the rate from the same points to El Paso, Tex., a more distant point on the same line, was 60 cents per 100 pounds, with a minimum weight of 36,000 pounds. The rate of 90 cents to Benson has been canceled since the hearing in this case, and the fifth-class rate of \$1 per 100 pounds now applies.

Fourth Section Applications Nos. 1118 and 1161, filed by the Southern Pacific Company, ask, among other things, for authority to maintain lower rates on sugar from California producing points to El Paso than to intermediate points. These applications were heard in connection with this case.

In justification of the lower rates to El Paso than to intermediate points, defendant offered testimony to the effect that rates on beet sugar from California producing points to El Paso are so fixed as to permit California shippers to meet the competition of shippers of cane sugar from New Orleans via all-rail routes, and from the Atlantic seaboard points by steamer to Galveston and thence by rail to El Paso; that most of the sugar moves from New York to Galveston at rates of from 7.5 to 10 cents per 100 pounds; and that the rate from Galveston to El Paso is 50 cents per 100 pounds. The rate, therefore, from New York to El Paso via Galveston, based on the combination of intermediate rates, is from 57.5 to 60 cents per 100 pounds. The Morgan line publishes a through rate from New York to El Paso of 63 cents per 100 pounds. The rate on sugar from New Orleans to El Paso is 55 cents. The rate from various beet-sugar-producing points in Colorado to El Paso is 49 cents per 100 pounds.

The distance from Los Angeles to El Paso is 811 miles, and from Los Alamitos it is 847 miles. The distance from New Orleans to El Paso is 1,191 miles. The distance from New York via Galveston involves a rail haul of 886 miles and a water haul of between 2,000 and 3,000 miles. The average distance from the Colorado shipping points is 726 miles.

The 60-cent rate to El Paso yields revenue of 1.42 to 1.48 cents per ton-mile. The average receipts of the Southern Pacific Company on all freight for the year 1910 were 1.23 cents per ton-mile. The rates from Southern California producing points to El Paso are not lower than other rates on sugar for like or greater distances

in other parts of the country where transportation conditions are similar or more difficult. It can not be concluded, therefore, that the rate to El Paso on sugar, even though influenced by competition, is unreasonably low. For example, rates from California producing points to stations in Minnesota and South Dakota are from 55 to 62 cents, with a carload minimum of 60,000 pounds and 60 to 75 cents with a carload minimum of 36,000 pounds, over distances of approximately 2,000 miles. The rates to Ogden and Salt Lake City, Utah, for a distance of approximately 1,200 miles, are the same as to El Paso. The 90-cent rate to Benson, Ariz., is blanketed over a territory nearly 500 miles in width, extending from Kim, Ariz., a station only 314 miles from Los Angeles, to within a short distance of El Paso. The average length of haul to points in this blanket is 600 miles, and the average revenue per ton-mile afforded by the 90-cent rate is 3 cents. The earnings per car on shipments to Benson, based on the 90-cent rate and 36,000-pound minimum, are \$324, and under the present rate, \$360.

Upon the facts of record, we are of opinion that a rate on sugar in carloads from Los Angeles and Los Alamitos to Benson, in excess of 60 cents per 100 pounds, with a minimum carload weight of 36,000 pounds, is unreasonable. We further find that the defendant has failed to justify the maintenance of a lower rate to El Paso than to Benson. Therefore, the fourth section applications as to this traffic will be denied.

The complainants ask for reparation. The 90-cent rate to Benson was in effect for many years, and business was conducted in view thereof. In previous cases the Commission has reduced rates from Pacific coast terminals to points in the so-called intermountain territory. In none of the cases was reparation awarded. We are of opinion that no reparation should be awarded upon the shipments described in this petition.

Orders will be entered in accordance with the findings herein.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 318.

RULES AND REGULATIONS GOVERNING CONCENTRATION OF COTTON AND COTTON LINTERS AT POINTS IN THE STATE OF ARKANSAS.

Submitted January 12, 1914. Decided January 22, 1914.

1. Under the suspended tariff rule, cotton and cotton linters from points in Arkansas may be concentrated at Little Rock, Pine Bluff, Camden, and Texarkana and reshipped to interstate destinations and the benefit of low inbound rates to the concentration point secured, provided the outbound shipments are not routed by the shipper, except as to terminal line at destination; *Held*, That such a rule is in contravention of section 15 of the act and should be canceled.
2. The offer of comparatively low any-quantity rates and considerations of economy of car supply and expedition in handling held to justify maintenance of tariff rule giving shippers the option of directing routing via established routes upon payment of higher local rates, or of availing of special low inbound rates limited in application to traffic, the routing of which from the concentration point is left to the carrier, or to traffic routed by the shipper via respondent's long-haul junctions or routes specifically named in the tariff.

S. H. West and Edward A. Haid for St. Louis Southwestern Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Chairman*:

This proceeding was instituted on October 4, 1913, for the purpose of determining the propriety of a rule in tariff I. C. C. No. 3267 of the St. Louis Southwestern Railway, proposed to become effective October 6, 1913. This tariff names certain inbound rates from points in the state of Arkansas to Little Rock, Pine Bluff, Camden, and Texarkana, Ark., applicable on cotton and cotton linters when concentrated at and reshipped from these points to interstate destinations, and the text of the rule which was suspended until February 3, 1914, is as follows:

ITEM No. 4.—It must be distinctly understood that in the application of items Nos. 1, 2, and 3, agents are to make refunds only to parties shipping cotton or cotton linters outbound, and then only when such outbound cotton or cotton linters is delivered to the St. L. S. W. Ry. without routing other than the designation of the terminal line at destination; cotton factors and other parties interested who do not reship their cotton or cotton linters will be required to transfer their freight bills by indorsement to parties making outbound shipments.

On the ground of abridgment of the right of shippers to direct routing, contrary to the provisions of section 15 of the act, protests were filed and suspension of the item was requested by the Arkansas

Cotton Association, Little Rock Board of Trade, and Pine Bluff Chamber of Commerce. On hearing respondent stated that the protests were to be withdrawn, and while this has not been done protestants were not represented at the hearing and have evinced no further interest in the proceeding.

Respondent follows the well-known practice of charging full local rates from points of origin to concentration points, which in this instance are intrastate rates not filed with this Commission, and of refunding to shippers the difference between the local rates and the lower rates carried in tariff I. C. C. 3267 upon presentation of satisfactory proof of reshipment under certain conditions, one of which is that incorporated in the suspended item. The low inbound rates which in some instances are 90 per cent, in many instances less than 50 per cent, and in many more instances less than 20 per cent of the local rates, are any-quantity rates which it is asserted are predicated upon the carrier receiving the benefit of the maximum haul and maximum load outbound from the concentration point and the testimony was directed to the justification for and the reasonableness of the rule designed to enable the carrier to secure such maximum haul and maximum load.

Outbound shipments from the concentration points move principally to New England, with some to New Orleans, La., and Galveston, Tex., the carrier assembling the lots in carloads for through transportation to destination, and thus conserving its car supply. Respondent's long haul on New England traffic is via St. Louis or East St. Louis, and on New Orleans traffic via Shreveport. In addition to being short hauled, if deprived of the right to select the routing, respondent would be unable to consolidate small lots in carloads at the concentration points and, owing to the lack of facilities at junction points or elsewhere for breaking of bulk and transferring, would be put to the necessity of furnishing, at the concentration points, separate through cars for the various lots. At Dupu, Ill., 9 miles south of East St. Louis, respondent and the St. Louis, Iron Mountain & Southern Railway maintain a joint break-up or transfer yard for carload freight to be delivered to connections, but the breaking up of carload shipments into small lots for eastern and New England points would have to be done at respondent's station in St. Louis, where, during the cotton season, the limited facilities are already overtaxed. This would entail hauling of the original cars by the Terminal Railroad Association from Dupu to St. Louis, across the Mississippi River, and the return of the additional cars to Dupu, with double bridge tolls and other additional transportation expenses.

Section 15 of the act as amended provides in part:

Provided, however, That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

This is not a flexible rule of law to be expanded or contracted to meet the needs of carriers under varying situations, which may or may not be of their own creation, and the Commission has promulgated nothing in the nature of exceptions thereto or exemptions therefrom.

The law requires the establishment and maintenance of through routes and joint rates in order that traffic may be moved whether in greater or lesser volume and for long or short distances without the delays or other handicaps of reshipment. It recognizes the carrier's right to its own long haul, hence releases it from the obligation to participate in a through route between any two points which does not include all or substantially all of its line or lines between those points except when an unreasonably long or circuitous route would otherwise be created; but it goes further, and where through routes and through rates have been established reposes in the shipper the right to dictate how his shipments must be routed both as to terminal carriers and intermediate carriers.

There are through routes and through rates from the concentration points here described to the principal destinations, and since the transportation and the low rates from points of origin to concentration points become parts of the interstate journey and interstate charges when the cotton or linters are reshipped, it follows that there are also through routes and through rates from points of origin through the concentration points to final destinations. Under these conditions, notwithstanding the apparently strong and impelling reasons on the part of the respondent for desiring to dictate intermediate routing, we hold that the portion of the proposed rule requiring the delivery of the shipments to the carrier without routing other than the designation of the terminal line at destination is in contravention of the plain terms of section 15 of the act—hence should be canceled.

In view of the fact that the inbound rates are comparatively low any-quantity rates, and in the interest of economy of car supply and expedition in handling, we think respondent is entitled to maintain a tariff provision which will give to the shipper the option of directing routing via any of the established routes upon payment of the higher local rates inbound or of availing of special low inbound rates limited in application to traffic the intermediate routing of which from the concentration point is left to the carrier, or to traffic routed by the shipper via respondent's long-haul junctions or routes specifically named in the tariff. In our opinion such a tariff provision would not deprive the shipper of the right reserved to him under section 15.

An order will be entered in accordance with the findings herein announced.

No. 4189.

NORCROSS BROTHERS COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted May 19, 1913. Decided January 12, 1914.

1. Shipment billed as finished marble, agreed to be of value of 40 cents per cubic foot, and upon which there was assessed a rate of 36½ cents per 100 pounds, applicable on that commodity at the agreed value stated, found to be sand-rubbed marble, which in defendants' tariffs is included in the description of rough marble and under an agreed value of 20 cents per cubic foot is entitled to a rate of 23½ cents per 100 pounds. Reparation awarded.
2. Carriers desiring to establish different rates on a commodity, based on the values of different classes or kinds thereof, or dependent not upon value but upon release to a certain amount of the carriers' liability for loss and damage, should make clear the distinction. In the first case there should be provision in the tariffs for statement in the bill of lading of the true value of the commodity, misstatement as to which would be a misdescription of the article shipped; and in the latter for exercise of choice of rates, by means of a statement in the bill of lading, signed by the shipper, specifying a value stated in the tariffs at which it is desired to ship.

Frank W. Ward for complainant.

W. A. Northcutt for Louisville & Nashville Railroad Company.

Alex. Bull for Southern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is a corporation engaged in the stone and building business, with principal office at Worcester, Mass. In a complaint filed June 22, 1911, it alleges that the defendants collected an unreasonable rate on a shipment of marble which moved from Tate, Ga., to Washington, D. C., on June 5, 1909, and asks for reparation. The claim was first filed with the Commission December 6, 1909.

The shipment consisted of 95 boxes of sand-rubbed marble, which was loaded into two cars and weighed 58,200 pounds. The consignor described it as "finished marble," and there was indorsed upon the bill of lading the statement that it was "marble agreed to be of the value of 40 cents per cu. ft." The Louisville & Nashville

tariff, which governed the shipment, provided commodity rates as follows:

Marble, dressed, viz: Blocks or slabs, dressed, hammered, chiseled, or polished, boxed or crated, agreed to be of the value of 40 cents per cubic foot, and so receipted for, minimum weight 30,000 pounds, carloads, 36½ cents per 100 pounds.

Marble, rough, viz: Rough quarried blocks, rough-sawed, sand-rubbed, or slushed slabs, blocks, or columns, floor tiling, building marble for exterior of buildings, including blocks, slabs, columns, and other pieces of marble used in the exterior of buildings, agreed to be of the value of 20 cents per cubic foot, and so receipted for, minimum weight 40,000 pounds, carloads, 23½ cents per 100 pounds.

The complainant has marble quarries near Tate, and during the period within which this shipment moved shipped 150 carloads of sand-rubbed marble from these quarries to Washington, agreed to be of the value of 20 cents per cubic foot, on which the rate of 23½ cents was paid. The shipment in question in this case consisted of marble of a different tint from that obtained from complainant's quarries; it was procured from another concern at Tate, but was of the same relative value, was finished in the same manner, was used in the exterior of the same building as that shipped from complainant's quarries, and complainant contends that it was entitled to the same freight rate, namely, that accorded to marble agreed to be of the value of 20 cents per cubic foot. On account of the indorsement of the 40-cent valuation on the bill of lading by complainant's subcontractor charges were imposed on the shipment at the rate of 36½ cents, amounting to \$212.43.

Complainant made a part of the record an affidavit of an officer of the subcontracting company, in which he says:

Affiant further states that this shipment consisted of 95 boxes of sand-rubbed building marble for exterior of buildings, and should have been released at 20 cents per cubic foot. It was purely an error on our part in releasing shipment at 40 cents per cubic foot.

This is corroborated by the admissions of counsel for the defendants.

This shipment moved over the Louisville & Nashville Railroad from Tate, Ga., to Winchester, Ky., thence via the Chesapeake & Ohio to Washington, D. C. There were but two rates published and lawfully in effect at the time of movement on the commodity actually shipped, viz, "sand-rubbed marble," which was included in the description of "marble, rough," as contained in defendants' tariffs. The first was the unconditional or unreleased combination class rate of \$2.20 per 100 pounds, made up as follows: Tate to Winchester, double first class, \$1.98, southern classification, as per Louisville & Nashville tariff, I. C. C., 9622, effective December 17, 1907; beyond, sixth class, 22 cents, official classification, as per Chesapeake & Ohio

tariff, I. C. C., 3579, effective January 17, 1906. The other was the commodity rate referred to of 23½ cents per 100 pounds, applicable when "agreed to be of the value of 20 cents per cubic foot."

At the hearing complainant testified that the value of the marble constituting this shipment was approximately \$3 per cubic foot, and that on this basis of actual value the open or unreleased rate was absolutely prohibitory; that no shipments had ever been made by them at this rate; and that, as evidenced by the shipment of the 150 carloads of this material during the period herein referred to at the 23½-cent rate applicable when agreed to be of the value of 20 cents per cubic foot, it had been their invariable practice and was their intention as to this particular shipment to release same to the 20-cent valuation, and that, as stated in the affidavit of their subcontractor, it was purely an error in not doing so in this case.

It is evident that the consignor in tendering for transportation the shipment here involved by his indorsement on the bill of lading desired to obtain the benefit of the lower rate applicable when released as to value, and this could fairly be construed to constitute notice to the carrier's agent to that effect, even though the shipper was laboring under a misapprehension as to the correct basis of the agreed value on rough marble. The essential fact, as to which there is no dispute, is that this was rough marble on which there was only one rate based on agreed valuation which the shipper could have secured upon a proper description, and which he apparently was trying to get. Had there been two published rates applicable on the same commodity when shipped released, based upon difference in value, the legal rate would have automatically attached itself to the declared or agreed value and we could not upon such a state of facts afford complainant relief from the consequence of his error. But in this case, as stated, there was only the one agreed valuation rate on rough marble and therefore neither the rate assessed of 36½ cents per 100 pounds nor the agreed value of 40 cents per cubic foot stipulated in the bill of lading, applying as they did only on marble, dressed, had any application whatsoever to a shipment of "sand-rubbed" marble, this being an entirely different commodity, coming within the description of "marble, rough."

It can not be questioned that had this shipment consisted of "marble, dressed" and been described by the consignor as "marble, rough," agreed to be of the value of 20 cents per cubic foot, resulting in the application of the 23½-cent rate, the consignor, upon discovery by the carrier that the shipment actually consisted of a commodity on which a higher rate applied, would have been liable and would have been required to pay to the carrier the resulting undercharge. The question here involved is merely the reverse of this principle.

Counsel for the defendant carriers upon the further hearing of this case conceded the correctness of this interpretation of their tariffs and that reparation is therefore due complainant as a straight overcharge. We find that complainant made the shipment in accordance with the above statement of facts; that it paid charges thereon at the rate applicable to the higher rated commodity; and that it was damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found to have been lawfully applicable to the commodity shipped. An award of reparation will therefore be entered in the sum of \$75.66, with interest from June 24, 1909.

Subsequent to this shipment the classification of marble under the southern classification has been changed from double first class to sixth class on "marble, dressed," and class A on "marble, rough," with corresponding reductions in the rates on shipments of this character from \$2.20 per 100 pounds to 64 and 52 cents, respectively. We express no opinion here as to the reasonableness of these latter rates as this question is not before us in this proceeding.

It may be stated with respect to the general questions here involved that the law requires that the carriers shall establish and afford to all shippers rates that are reasonable and unconditional as to the amount of the carrier's liability in case of loss or damage. In some instances it is reasonable to make varying rates on the same commodity, dependent upon the value thereof. This is true in cases where there is a wide range of actual value in the different grades or qualities of the same article. In such cases where the carrier has established different rates depending upon difference in actual value, the valuation by the shipper becomes a part of the description of the article shipped, and if he misrepresents the value under such a tariff in order to procure a rate applicable to the grade or quality of the article which is of less value than that which he actually ships, it is in the nature of a false description of the property. Carriers sometimes, as in the case before us, deem it proper to offer to shippers lower rates on the same commodity when the shipper is willing to release the carrier from liability beyond some agreed amount for loss occurring from causes beyond the carrier's control. In this case there is no misrepresentation of the value; it is simply a choice between alternative rates dependent not upon the value of the commodity, but upon the contract of release or limitation affecting a carrier's liability in case of loss or damage.

Both shippers and carriers should keep in mind the clear distinction between a case of the kind last mentioned, where the lower rate dependent upon the restricted liability of the carrier is usually called a released rate, and the instance first above referred to, where the

stated value of the commodity by the shipper is a part of the description of the article and is not merely the exercise of an option by him as to which of two or more rates he will accept, dependent upon the contract of release. Carriers should, in order to avoid complication and confusion, state these distinctions in their tariffs with utmost clearness. The tariffs of defendants in this respect, as applicable to marble, have not been framed with proper regard to these distinctions, and should be revised with a view to removing these objections. To this end carriers, when they desire to fix different rates dependent upon substantial difference in value of different qualities or grades of the same commodity, should include in their tariffs a provision that for this purpose the shipper must state that the shipment is of a certain value, and the tariff rate applicable to such specified value must be applied. The value specified must be the true value of the commodity or grade offered for shipment, so that the lawful rate under the tariff may be applied.

When it is the purpose of carriers to offer different rates applicable to the same commodity, dependent not upon differences in value but upon release of the carrier's liability for loss and damage, to the extent that this may lawfully be done, the tariffs should provide for the exercise of the choice of rates, by means of a statement in the bill of lading, signed by the shipper, that the shipment is released to a value stated in the tariffs and at which he seeks to ship the same.

Rates of either kind must bear a due and reasonable relation to the unconditional rates of the carrier to which every shipper is entitled without the necessity of waiving his lawful rights.

No. 8244.

BUFFALO, ROCHESTER & PITTSBURGH RAILWAY
COMPANY

v.

PENNSYLVANIA COMPANY.

Submitted December 7, 1912. Decided December 3, 1913.

Defendant refuses to transport for complainant interstate carload shipments of freight from and to industries on defendant's lines within the switching limits of the city of New Castle, Pa., while it transports similar traffic for three other carriers serving the same point; *Held*, That this discrimination against complainant is undue and unlawful.

William A. Glasgow, jr., for complainant.

A. P. Burgwin for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is a corporation operating a line of railroad from Rochester and Buffalo, N. Y., to New Castle, Pa., and to Pittsburgh, Pa. It alleges in substance and effect that the defendant refuses to accept from or deliver to complainant at junction points in New Castle interstate carload shipments of freight originating at or destined to points on the lines of the complainant or its connections and to transport them to or from industries served by defendant within the limits of that city, in violation of sections 1 and 15 of the commerce act. It is also alleged that the defendant accepts and transports interstate carload traffic to and from the industries in question from three other railroad companies in New Castle, herein, after named, for a uniform charge of \$2 per car, which, in view of the defendant's refusal aforesaid, constitutes undue and unreasonable discrimination against complainant and the shippers of interstate commerce over its line, in violation of section 3 of the said act. Complainant also asks for the establishment of through routes and joint rates between points on its line and industries on the lines of defendant in New Castle.

New Castle is about 50 miles north of Pittsburgh and has a population of about 40,000. It is an important manufacturing point and is reached by the lines of complainant and defendant and by those of the Pittsburgh & Lake Erie Railroad Company, Erie Railroad Company, and the Baltimore & Ohio Railroad Company, hereinafter called, respectively, the Pittsburgh & Lake Erie, the Erie, and the Baltimore & Ohio. Prior to September 20, 1908, complainant's line of road extended from Rochester and Buffalo, N. Y., to Punxsutawney, Pa., and it had in contemplation the construction of a line to

and beyond New Castle. On the date named a contract was entered into between the Pittsburgh & Western Railway Company (which had a line of road in operation between Butler, Pa., and New Castle, and between Butler and Allegheny, Pa.) and the Allegheny & Western Railroad Company and its lessee, the Buffalo, Rochester & Pittsburgh Railway Company, whereby it was provided that the Allegheny & Western should build a line from Punxsutawney to Butler, the latter being about 40 miles southeast of New Castle, and the Pittsburgh & Western (to which the Baltimore & Ohio is at present successor) agreed that the complainant, lessee of the Allegheny & Western, might use jointly with the Pittsburgh & Western, upon terms set forth in the contract, the lines of road between Butler and New Castle and between Butler and Allegheny.

By this contract the complainant acquired the right, which it has ever since enjoyed, to transport freight and passengers with its own equipment over the railroad of the Pittsburgh & Western between the point of connection at Butler Junction and New Castle. It appears that all the money necessary for the construction of the line of road from Punxsutawney to Butler and for rebuilding the line of the Pittsburgh & Western was advanced by the complainant. The road was completed in the year 1899, and immediately the complainant began the operation of its freight trains to New Castle and has ever since used the tracks jointly with the Baltimore & Ohio.

The terminal facilities of defendant in New Castle consist of depots, freight stations, yards, team tracks, and sidetracks, together with spur tracks reaching 26 industries within the switching limits. The sidetracks and spurs, exclusive of main tracks, aggregate about 24 miles, the value of which defendant claims to be over \$3,000,000. It appears that spur tracks which reach various industries within the switching limits, aggregating nearly four miles, are owned by the industries. The switching limits of New Castle extend in the direction of their greatest length for a distance of about four miles, and included therein are more than one hundred industries served by the defendant or by the other carriers reaching the city.

The terminal facilities of complainant in New Castle consist of a freight station with two tracks of 10 cars capacity each and a team track of 12 cars capacity, located about 1,000 feet from a point of physical connection of the Baltimore & Ohio with the tracks of defendant at Moravia street, near the center of the city. Complainant also has yards near another point of physical connection with the rails of defendant, about a mile and a quarter from Moravia street, situated on land acquired by it, and at that point there are ample facilities for interchange of carload freight. Complainant has three industries on its line within the switching limits. The defendant has

interchange yards at Moravia street, with capacity for 250 cars, and also at the point of intersection with complainant's tracks at the latter's outer yards, the exact extent of which does not appear from the record, but which yards are much more extended than those at Moravia street.

It is admitted by the defendant that it will receive cars tendered to it at junction points within the switching limits of New Castle by the Pittsburgh & Lake Erie, the Erie, and the Baltimore & Ohio and will transport them to industries on its lines within the city for a uniform charge of \$2 per car, and that it will transport cars from industries on its lines in New Castle to junction points with the said three carriers for a similar charge. It also admits that it refuses to transport cars within the switching limits tendered by complainant to it at either junction point in the city or to transport cars from industries on its line within the switching limits to the junction points on complainant's line for transportation by it beyond.

In its tariff the defendant names 128 industries within the switching limits and the immediate vicinity of New Castle from and to which carload shipments are transported by defendant and the other three carriers above specified at "switching" charges named therein. It appears in this tariff that from and to points within the switching limits a uniform charge of \$2 per car is assessed, and that there is a varying charge of from 10 cents per 100 pounds to \$5 per car for switching service from and to industries located on lines other than those of the defendant outside of the switching limits. Industries on the tracks of the defendant within the switching limits of New Castle which receive carload freight transported by complainant or which desire to ship over complainant's lines to points beyond New Castle must dray their traffic from or to complainant's yards. Representatives of several such industries, called by complainant, testified as to the disadvantage to them resulting from the refusal of the defendant to perform switching service on traffic moving over complainant's line.

It is asserted by the defendant that the \$2 charge which it collects from the Pittsburgh & Lake Erie, the Erie, and the Baltimore & Ohio for switching cars from and to industries within the switching limits is less than the cost of service, and that the service is performed for the carriers named in return for similar switching services performed by these carriers for it at other cities. In support of its contention as to equality of treatment as between it and the other carriers in the matter of reciprocity, the defendant presented statements showing that at several points in the Shenango and Mahoning valleys of Pennsylvania and Ohio reciprocal switching arrangements are in effect and that the total amount of switching secured by it was

greater than that performed by it, the figures (in number of cars) for the years 1909-1911, inclusive, for the valleys generally (including New Castle) and for New Castle proper being as follows:

	In Shenango and Mahoning valleys.		At New Castle.	
	For defendant.	By defendant.	For defendant.	By defendant.
Baltimore & Ohio.....	22,583	24,840	173	22,653
Pittsburgh & Lake Erie.....	24,588	19,808	24,588	19,519
Erie.....	39,233	13,195	1,796	696
	86,404	57,843	26,557	42,868

It will be noted that the Baltimore & Ohio renders less service for the defendant than the latter performs for it. During 1911 the Baltimore & Ohio switched for the defendant at New Castle 69 cars and in the valleys generally 4,185 cars, while the defendant switched for it 8,286 cars in New Castle and in the valleys generally 8,900 cars. The number switched by the complainant for the defendant in that year was 406 to points within the switching district of New Castle, at the rate of \$2 per car, and 3,661 to points adjacent thereto, at the rate of 10 cents per ton, minimum \$2 per car.

The defendant contends that it has the right to take into consideration the fact that the three other carriers, each of which is part of a large system, are in position either at New Castle or elsewhere to offer it reciprocal advantages that are fully compensatory for the switching done for them in New Castle, whereas complainant is not in position to offer similar advantages by way of compensation at New Castle or elsewhere; and that respondent therefore has the right to perform this switching service in connection with traffic of these three other carriers at New Castle and to refuse to perform a similar service for complainant.

Carload shipments transported to New Castle by the Baltimore & Ohio and by the complainant arrive at that point from Butler and beyond under similar circumstances and conditions. If the cars are hauled to that point by a Baltimore & Ohio engine and tendered to the defendant, they will be transported by the latter to any point within the switching limits for a charge of \$2 per car. If similar cars are transported over the same line and to the same point by complainant, the defendant refuses to transport them to any point within the switching limits.

While complainant's petition contains a prayer for the establishment of through routes and joint rates, the complaint has been urged

mainly upon the ground of discrimination, and in our view the case may be disposed of by the determination of this question.

Section 3 of the act to regulate commerce, after forbidding undue and unreasonable discrimination between persons, companies, firms, corporations, localities, or particular descriptions of traffic in any respect whatsoever, provides as follows:

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connected therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Beyond question the refusal of the defendant to accept from and move to complainant's line carload shipments of freight within the switching limits of New Castle while performing like service in connection with the said other three carriers within said switching limits is a clear discrimination. Is it unjust, unreasonable, or otherwise unlawful? As before stated, reciprocity in the performance of like service by the said three other carriers at places other than New Castle and not by the complainant is urged as justification for this discrimination.

If the defendant, notwithstanding the command of the law above quoted to afford all reasonable, proper, and equal facilities for the interchange of traffic between it and connecting lines and for the receiving, forwarding, and delivering of property to and from its lines and lines connected therewith, without discrimination as to rates and charges as between its connections, can justify the practice of inequality here shown because of reciprocal services performed at other and distant places by some of the carriers having connection with its line at New Castle, it would then seem to be necessary to determine the extent and measure of those services performed at such other places by each carrier and the value thereof to the defendant, a manifestly futile undertaking involving indefinite, uncertain, and speculative and, as we think, irrelevant questions and considerations as to the value of this and that service and the varying cost of performing it at many and remote places, impossible of satisfactory and reliable determination.

We conclude and find that the discrimination practiced by the defendant against the complainant at New Castle, as hereinbefore stated, is undue, unreasonable, and in violation of the act to regulate commerce. A suitable order will be entered requiring the defendant to cease and desist from said discrimination and disobedience of law.

There is no question before us as to how much is a reasonable charge for this service, and we express no opinion as to this.

HARLAN, *Commissioner*, dissenting:

That all the facilities of a carrier, including its terminals, ought to be open to all shippers, as well to those off as to those on its rails, seems to me to be entirely clear, and under rates that are reasonable, considering the nature of the service, shippers on the lines of this complainant ought to have access to and from the New Castle terminals of the defendant. In becoming a common carrier of passengers and general traffic the defendant dedicated all its public facilities to the use of the whole public and may not restrict any portion of them to the use of a particular part of the public. But the order awards relief, as I understand the report, not on the basis of a reasonable charge for the use of the defendant's terminals in connection with a line haul over the complainant's rails, which is the basis of the relief recently ordered in *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C., 621, but is drawn wholly on the theory that the refusal by the defendant to permit the use of its New Castle terminals to the complainant, on equal terms with the other lines, is an unlawful discrimination against it.

In my judgment that conclusion is at variance with that part of section 3 of the act that rather definitely limits our power to require one carrier to give the use of its terminals to another carrier. The success of a railroad depends largely upon its terminals and in its own control of them, subject, of course, to the right of the public to use them at a reasonable charge; and this seems to me to be fully recognized in the language of the act at the point last mentioned. In extending the use of its terminals to the Baltimore & Ohio and the other lines, the Pennsylvania, as the record shows, gets a *quid pro quo* there and elsewhere; the relation is a reciprocal one that is mutually advantageous. The record also shows that the complainant is not in a position to give what it wishes to receive at the hands of the defendant. Under these circumstances it seems to me that the report and order go too far and do not take sufficiently into consideration the differences in conditions as between the complainant and the other lines. I could readily concur in an order fixing reasonable joint through rates for the carriage of traffic to and from the terminals of the defendant and over the rails of the complainant, and giving to the defendant divisions thereof that would amply recognize the investment in its terminals, and at the same time give recognition to the value to the complainant in having such use of them. But the findings and order are based on entirely different considerations. See *Public Service Commission of Washington v. N. P. Ry Co.*, 23 I. C. C., 333; 26 *Ib.*, 272.

For these reasons I am unable to concur in the views of the majority.

H. C. C.

No. 5454.

STEWART-GREER LUMBER COMPANY ET AL.

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

FOURTH SECTION APPLICATION No. 4218.

Submitted August 15, 1913. Decided January 6, 1914.

Rate of 14 cents per 100 pounds on hardwood lumber in carloads from Mangham, Baskin, and Winnsboro, La., to New Orleans, La., and points taking the same rates, for export, not found unreasonable. Application under the fourth section of the act for authority to maintain a lower rate on hardwood lumber for export from Rayville, La., to New Orleans, La., than from intermediate points denied.

John R. Walker for complainants.

Henry G. Herbel, Martin L. Clardy, and F. G. Wright for St. Louis, Iron Mountain & Southern Railway Company and Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are engaged in the manufacture of hardwood lumber at Mangham, Baskin, and Winnsboro, La. By complaint, filed January 22, 1913, they allege that the export rate maintained by defendants for the transportation of hardwood lumber in carloads from the points named to New Orleans and points taking the same rate is unreasonable, subjects complainants to undue prejudice and disadvantage, and is in violation of the long-and-short-haul clause of the fourth section of the act. Reparation and the establishment of a reasonable rate for the future are asked.

The rate on hardwood other than woods of value, from Mangham, Baskin, and Winnsboro, to New Orleans for export, was, when complainants made the shipments upon which they seek reparation, and is now, 14 cents per 100 pounds. Mangham, Baskin, and Winnsboro are on the St. Louis, Iron Mountain & Southern Railway (hereinafter called the Iron Mountain). Mangham, the most northerly of the three, is 12 miles south of Rayville, La., where the Vicksburg, Shreveport & Pacific Railway crosses the Iron Mountain.

The route from Rayville via the Iron Mountain is southward over the rails of that carrier to Ferriday, La., thence via the Texas & Pacific Railway direct to New Orleans, or via the Yazoo & Mississippi Valley, through Natchez, Miss., to New Orleans. The route via the Vicksburg, Shreveport & Pacific as the initial carrier is eastward to Vicksburg, Miss., and southward via the Yazoo & Mississippi Valley, or through Jackson, Miss., over the Alabama & Vicksburg Railway to Meridian, Miss., and southward to destination. The Vicksburg, Shreveport & Pacific maintains a rate of 10 cents on lumber, both domestic and export, from all its stations from Shreveport eastward to New Orleans, and the Iron Mountain meets that rate at Rayville. The intrastate rate prescribed by the Louisiana Railway Commission, is 10 cents from all these points.

Complainants allege that the rate of 10 cents would be reasonable for export traffic on basis of the earnings per ton-mile for the average distance of 257 miles from their mill points to New Orleans; that the 10-cent rate is recognized by defendants as being compensatory, as is shown by the maintenance of that rate from Rayville, a more distant point; that the rate of 14 cents is unreasonable in itself and unjustly discriminatory, because it enables the shippers at Rayville to pay more for stumpage than complainants can afford to pay; and that the lower rate enables Rayville shippers to sell lumber for export at a profit at lower prices than complainants.

Complainants assert that they meet competition from all points in the Mississippi Valley, from southern Missouri south to New Orleans; that the mill at Rayville is engaged in the export trade, its lumber being sold through a firm in Memphis who are the largest exporters of hardwood lumber in the country; and that one of the complainants has had frequent communications from foreign buyers, saying that they had been able to purchase lumber from the Memphis firm at lower prices than complainant had quoted.

The rate of 14 cents is a group rate applicable from many points in the northeastern part of Louisiana. The rate applies from points on the Iron Mountain from Ferriday, on the south, to Jones Spur and Millikin, on the north. The latter points are 305 and 289 miles, respectively, from New Orleans. The only departure from the 14-cent rate is at competitive points, such as Rayville. This rate from points in the group within which Mangham, Baskin, and Winnsboro are located was before us in *National Lumber Exporters' Asso. v. K. C. S. Ry. Co.*, 25 I. C. C., 78. In that case we held that it was not unreasonable. The same conclusion was reached with respect to the 14-cent rate from Winnsboro and Ferriday, La., in *Kennedy & Co. v. St. L., I. M. & S. Ry. Co.*, Unreported Opinion No. 742. On the record before us we are not convinced that our previous decisions respecting that rate were erroneous.

The Iron Mountain has on file with the Commission an application for relief from the provisions of the fourth section of the act with respect to rates to New Orleans from all points in Louisiana on shipments for export which are lower than from intermediate points. A hearing on that portion of the application relating to maintenance of a lower rate on lumber for export from Rayville to New Orleans than from Mangham, Baskin, and Winnsboro to the same point was had in this proceeding. Mangham, Baskin, and Winnsboro are intermediate to Rayville on the line of the Iron Mountain with respect to traffic to New Orleans.

In connection with the Vicksburg, Shreveport & Pacific there are two routes from Rayville to New Orleans. One is via Vicksburg and the Yazoo & Mississippi Valley, a distance of 300 miles; the other via the Alabama & Vicksburg to Meridian, Miss., thence via the New Orleans & Northeastern, a distance of 397 miles. In proper cases we have authorized a long line to meet the rate of a short line between two points, and at the same time to maintain higher rates from intermediate points. In this case the short line meets the rate of the long line at a competitive point. Such a showing does not afford a proper basis for relief from the requirements of the fourth section. We find that the defendants have not justified the maintenance of a lower rate on lumber for export from Rayville to New Orleans than they maintain from Mangham, Baskin, and Winnsboro, and the portion of the fourth section application heard herewith will be denied.

Complainants ask for reparation. There is no such definite proof of record respecting the damage, if any, suffered by complainants on account of the lower rate from Rayville as would warrant an award of reparation. Reparation will, therefore, be denied. Our order under the fourth section will make unlawful for the future the maintenance of a higher rate by defendants from Mangham, Baskin, and Winnsboro to New Orleans for export than is contemporaneously maintained by them from Rayville to New Orleans.

No. 5511.
MICHIGAN SEATING COMPANY
v.
GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.

Submitted September 22, 1913. Decided January 6, 1914.

Defendants' rating of three times first class applicable to shipments of fiber furniture in less than carloads from Jackson, Mich., to points in other states where rates are governed by the official classification found unreasonable and rating of double first class prescribed for future.

Charles W. McGill and *Roy R. Darwin* for complainant.

Ernest S. Ballard and *William W. Collin, jr.*, for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of furniture at Jackson, Mich. By complaint, filed February 6, 1913, it alleges that the rates charged by defendants for the transportation of fiber furniture in less than carloads from Jackson, Mich., to points in other states where rates are governed by the official classification are unreasonable and unjustly discriminatory.

The official classification provides a rating of three times first class on various specified articles of bamboo, fiber, grass, rattan, reed, or willow furniture in less than carloads. It is complainant's contention that fiber furniture should not be classed with the several other kinds of furniture on which a rating of three times first class applies, but that it should be accorded a rating of one and one-half times first class, which applies on similar articles of wooden furniture, or at the most a rating not higher than double first class, which applies on furniture, n. o. s. A rating of double first class applies in western classification territory.

The framework of fiber furniture is made of maple, oak, or elm wood. The completed frame is wound with a tough braided or twisted paper fiber, and the article is then given a finishing coat of glue size or shellac. The furniture is sometimes crated for shipment, but generally moves wrapped with excelsior pads to protect the parts most liable to damage.

On behalf of complainant it was testified that fiber furniture is as strong as wooden furniture and is not as liable to damage in transit by contact with other articles, because there is generally no polished surface on articles of fiber furniture, while wooden furniture

usually has a highly polished surface, which is easily marred. Complainant states that it has never filed a claim on account of damage to the finish of fiber furniture. The average weight of all articles of fiber furniture, according to complainant's witness, is about 3.5 pounds per cubic foot. Complainant's application to the Official Classification Committee for a lower rating, which was filed of record by defendants, shows weights on nine different articles of fiber furniture, ranging from 1.8 pounds to 10.6 pounds per cubic foot, averaging 4 pounds, and values ranging from 8 cents to \$1.67 per cubic foot, averaging 58 cents. A witness for complainant testified that the average weight of its fiber furniture is about 50 per cent greater than the average weight of reed furniture, while willow and rattan furniture are both lighter than reed furniture. A carload of reed rockers weighs about 3,000 pounds, while a carload of fiber rockers will weigh about 5,000 pounds. The greater weight per cubic foot of complainant's fiber furniture as compared with reed furniture is, according to complainant's testimony, attributable chiefly to the fact that fiber wrapping is somewhat heavier than the reed wrapping, and absorbs considerably more glue size or shellac.

The rating of three times first class was established about 25 years ago to apply on rattan and willow furniture, and as other kinds of furniture of somewhat similar character came into the market they were placed in the same class. However, as indicated above, fiber furniture is about 50 per cent heavier than reed, and reed is heavier than willow or rattan. In view of the materially greater density of fiber furniture, as compared with willow and rattan furniture, on which the rating of three times first class was originally intended to apply, we think that fiber furniture should be accorded a lower rating. The question of whether reed, grass, and bamboo furniture may properly be classed with willow and rattan furniture is not before us for determination, and no opinion is expressed in regard thereto. Upon consideration of all the facts of record we find that the present rating of three times first class, applicable to shipments of fiber furniture in less than carloads from Jackson, Mich., to points in other states where rates are governed by the official classification, is unreasonable, and should not exceed double first class, which will be prescribed as the maximum for the future. An order will be entered accordingly.

No. 4860.
S. C. SCHENCK

v.

NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted December 14, 1912. Decided January 6, 1914.

1. Tariff rule of defendant Norfolk & Western Railway Company providing that freight charges will be assessed on weights ascertained at its regular weighing stations, and that the rule will not be departed from, found to be unreasonable.
2. Case held open to afford defendants an opportunity to file with the Commission modified rules for the weighing of coal in carloads and for the assessment of transportation charges thereon, in accordance with the principles announced in this report.

M. F. Gallagher and Earl B. Wilkinson for complainant.

R. Walton Moore, Frank W. Gwathmey, and Charles D. Drayton for Norfolk & Western Railway Company.

James Stillwell for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the coal business at Chicago, Ill. By complaint, filed May 6, 1912, he alleges that charges collected by defendants for the transportation of three carloads of lump coal from Vivian, W. Va., to Chicago, were unreasonable because assessed upon a greater tonnage than was delivered. Reparation is asked.

The shipments described in the complaint moved from the point of origin January 31, May 14, and November 17, respectively, 1910. The shipment of January 31 was not delivered within two years prior to the filing of the complaint and any claim as to it is therefore barred by the statute. The other two shipments moved via the Norfolk & Western and Pittsburgh, Cincinnati, Chicago & St. Louis railways to Chicago, and were switched to complainant's yard by the Chicago, Milwaukee & St. Paul Railway. Freight charges were collected in the sum of \$202.03 at a rate of \$2.05 per ton, based on a weight of 102,900 pounds as to one of the cars and a weight of 94,200 pounds as to the other. These weights were obtained by using the scales of the Norfolk & Western at Vivian. Upon delivery the cars were promptly reweighed on complainant's track scale. The Chicago net weight of the first car was 99,900 pounds. The gross weight was 2,400 pounds less than at point of origin, while

the tare weight was 600 pounds greater. The Chicago net weight of the second car was 91,300 pounds. The gross weight was 3,100 pounds less than at point of origin and the tare weight 200 pounds less.

The fact that the tare weights at Chicago do not differ widely from the tare weights at point of origin would indicate that complainant's scale was substantially accurate, and that the differences in the gross and net weights were due chiefly to differences in the weights of the coal. Complainant weighed the cars uncoupled, both loaded and empty, and while standing still. He testified that his scale is of standard make; that it is tested twice a year by the authorities of the city of Chicago; that every week or ten days his own employees test it to determine its continuing accuracy; that the scale is frequently swept and is thoroughly cleaned throughout about every six months. Upon oral argument counsel for complainant stated that the scale is under the jurisdiction of the Western Weighing Association, and that complainant's weights are accepted by the western lines on outbound shipments.

It was testified for the Norfolk & Western Railway Company that the cars were weighed at point of origin on a scale of standard make and by competent men; that the cars were weighed uncoupled and while moving across the scale by force of gravity; and that the scale was tested about every two weeks during the year 1910.

Complainant does not question the accuracy of the weights at point of origin, but insists that the Chicago weights were also correct, and that the difference represents loss in transit.

On behalf of defendants it was testified that the cars in which the shipments moved were in good condition, and that losses in transit were not probable. It was said that the yards through which the cars passed were adequately policed; that trainmen and switchmen who find it necessary to take coal from cars for carrier's use have instructions to report the amount taken; and that the records of such reports do not show that any coal was taken from these cars.

The Norfolk & Western Railway publishes in its tariff the following rule:

Freight charges will be assessed on weights ascertained at Norfolk & Western regular weighing stations, and this rule will not be departed from by the Norfolk & Western Railway.

Complainant attacks this rule as unreasonable and contends that destination weights ascertained on his private track scales should be observed.

The tariffs of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway contain rules providing for the reweighing of cars, "wherever practicable," upon request of a consignor or consignee who

furnishes evidence of error in the carrier's weight, and for correction of charges when as a result of the reweighing an error of 1,000 pounds or more is disclosed; in which event no charge is made for the reweighing service.

The tariffs of the Norfolk & Western Railway contain a further provision to the effect that where shipments have been transferred en route, where cars have met with an accident, or where, for other similar reasons, there is evidence of loss in transit, the cars should be reweighed either en route or at destination whenever practicable; but that provision furnishes no remedy for such a situation as here presented. The shipments in question were not transferred en route, nor did they meet with any accident, and there was no tangible evidence of loss in transit until they were reweighed by complainant. The company also publishes a rule which reads as follows:

Traffic destined to points beyond the tracks of this company is entitled to such privileges and will be subject to such charges as provided in the tariffs of the carriers granting or performing the service.

There was no request by complainant in this case to have the cars reweighed, as provided in the rules of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway.

In *Peters v. O. S. L. R. R. Co.*, 20 I. C. C., 598, the Commission found unreasonable a tariff rule to the effect that shipments of coal should not be reweighed. We there said, as we had previously said in other cases, that the actual weight of shipments constitutes the true basis upon which to assess transportation charges, and that the question is one of fact to be determined in a manner just to both parties, as to which the *ex parte* action of either party can not conclude the other. Following the principle thus announced, and upon the facts of record in this case, we find that the rule of the Norfolk & Western Railway Company is unreasonable in that by its terms no correction of given weights, even though definitely ascertained to be wrong, is permitted.

We are not convinced, however, that a general rule which would require carriers to accept weights ascertained by shippers or consignees on their private scales would furnish the proper remedy or would be just and reasonable. In *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.*, 21 I. C. C., 632, consideration was given by this Commission to the subject of natural shrinkage and other causes resulting in differences in weights of coal as between points of origin and points of destination, and we there held in substance that carriers should provide for the reweighing of coal upon request of shippers, and that if such reweighing should disclose a variation of more than 1 per cent, with a minimum of 500 pounds, from the original shipping weight, the original weight and charges should be corrected

While it is alleged in the complaint that the rates to Oklahoma City are unreasonable, there is very little evidence in the record with respect to that question. Aside from some per-ton-mile statements the complainant advances no reasons from which we may properly draw a conclusion that the rates complained of are unreasonable *per se*. As we understand the complaint, in the light of the evidence, it has relation to what is alleged to be a discriminatory and prejudicial adjustment of the rates on the articles in question to the state of Oklahoma, whereby Oklahoma City merchants are required to pay rates on the articles in question which are higher actually and relatively than rates to other points in the same state.

Oklahoma City is located nearly in the geographical center of the state and is served by four railroads. It is reached by direct single lines from St. Louis, Mo., Memphis, Tenn., Kansas City, Mo., Chicago, Ill., and Galveston, Tex. It is connected with Memphis by the direct line of the Chicago, Rock Island & Pacific, distance 487 miles; and by the line of the St. Louis & San Francisco, distance 586 miles. The line of the Chicago, Rock Island & Pacific extends from Memphis through Oklahoma City to El Paso, Tex. In addition to through traffic from east of the Mississippi River through the Memphis gateway this carrier transports an extensive coal tonnage from Arkansas and eastern Oklahoma mines to all points west. There is a greater density of tonnage in the vicinity of Oklahoma City than on any other part of the Chicago, Rock Island & Pacific in the state. The Atchison, Topeka & Santa Fe has a direct line from Kansas City and Chicago to Oklahoma City. The line extends to Galveston, with a considerable density of tonnage. From St. Louis the Atchison, Topeka & Santa Fe, in connection with the Wabash, forms a route with a distance of 642 miles. The Missouri, Kansas & Texas has a direct single line with a distance of 593 miles. The St. Louis & San Francisco has a direct single line with a distance of 543 miles. This is the short line. The defendants contend that this short-line distance is not the fair basis to be employed in rate calculations from Pittsburgh or St. Louis. It is urged that the basis should be figured by taking the average distance to Oklahoma City from the several Mississippi River crossings north to Dubuque, Iowa, which the defendants claim results in an average distance of 619 miles. It appears, however, that in arriving at this figure several lines of railroad are taken into consideration which do not serve the state of Oklahoma. Taking the distances from the Mississippi River crossings of the four carriers above mentioned, the average appears to be 576 miles, and this includes the Chicago, Rock Island & Pacific, which is the long line into western Oklahoma. If this line were omitted the average would be 551 miles. In *Investigation of*
29 I. C. C.

No. 4701.

OKLAHOMA TRAFFIC ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted January 17, 1913. Decided January 5, 1914.

Rates on iron and steel articles in carloads from Pittsburgh, Pa., Chicago, Ill., Birmingham, Ala., and points taking the same rates, to Oklahoma City, Okla., found unduly discriminatory and unjustly prejudicial with respect to rates on the same articles to other points in the state of Oklahoma.

O. B. Bee and *W. V. Hardie* for complainant.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

T. J. Norton and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

W. F. Dickinson and *W. T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

Joseph M. Bryson and *C. S. Burg* for Missouri, Kansas & Texas Railway Company.

R. D. Sangster for Muskogee Traffic Bureau, intervener.

Martin E. Casto for Wichita, Kans., Business Association Traffic Bureau, intervener.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This is a complaint that carload rates on iron and steel articles from Pittsburgh, Pa., Chicago, Ill., and Birmingham, Ala., and points taking the same rates, to Oklahoma City, Okla., are unreasonable and unduly discriminatory and unjustly prejudicial, in violation of sections 1, 2, and 3 of the act. The Wichita, Kans., Business Association Traffic Bureau and the Muskogee, Okla., Traffic Bureau, intervened in behalf of their interest in the rates in question.

There is evidence in the record to the effect that there is some movement of iron and steel articles to Oklahoma City and other Oklahoma points from Chicago and Birmingham. The complainant represented that Oklahoma City was chiefly interested in the rates from the Pittsburgh district. The price of iron and steel articles is made in Pittsburgh. That is to say, the price of these articles at any given destination is what is called the Pittsburgh base price plus the freight rate from Pittsburgh, no matter from what point shipment is made. It will therefore be sufficient to discuss the rates from Pittsburgh to Oklahoma City and points in the same state.

While it is alleged in the complaint that the rates to Oklahoma City are unreasonable, there is very little evidence in the record with respect to that question. Aside from some per-ton-mile statements the complainant advances no reasons from which we may properly draw a conclusion that the rates complained of are unreasonable *per se*. As we understand the complaint, in the light of the evidence, it has relation to what is alleged to be a discriminatory and prejudicial adjustment of the rates on the articles in question to the state of Oklahoma, whereby Oklahoma City merchants are required to pay rates on the articles in question which are higher actually and relatively than rates to other points in the same state.

Oklahoma City is located nearly in the geographical center of the state and is served by four railroads. It is reached by direct single lines from St. Louis, Mo., Memphis, Tenn., Kansas City, Mo., Chicago, Ill., and Galveston, Tex. It is connected with Memphis by the direct line of the Chicago, Rock Island & Pacific, distance 487 miles; and by the line of the St. Louis & San Francisco, distance 586 miles. The line of the Chicago, Rock Island & Pacific extends from Memphis through Oklahoma City to El Paso, Tex. In addition to through traffic from east of the Mississippi River through the Memphis gateway this carrier transports an extensive coal tonnage from Arkansas and eastern Oklahoma mines to all points west. There is a greater density of tonnage in the vicinity of Oklahoma City than on any other part of the Chicago, Rock Island & Pacific in the state. The Atchison, Topeka & Santa Fe has a direct line from Kansas City and Chicago to Oklahoma City. The line extends to Galveston, with a considerable density of tonnage. From St. Louis the Atchison, Topeka & Santa Fe, in connection with the Wabash, forms a route with a distance of 642 miles. The Missouri, Kansas & Texas has a direct single line with a distance of 593 miles. The St. Louis & San Francisco has a direct single line with a distance of 543 miles. This is the short line. The defendants contend that this short-line distance is not the fair basis to be employed in rate calculations from Pittsburgh or St. Louis. It is urged that the basis should be figured by taking the average distance to Oklahoma City from the several Mississippi River crossings north to Dubuque, Iowa, which the defendants claim results in an average distance of 619 miles. It appears, however, that in arriving at this figure several lines of railroad are taken into consideration which do not serve the state of Oklahoma. Taking the distances from the Mississippi River crossings of the four carriers above mentioned, the average appears to be 576 miles, and this includes the Chicago, Rock Island & Pacific, which is the long line into western Oklahoma. If this line were omitted the average would be 551 miles. In *Investigation of*

Alleged Unreasonable Rates on Meats, 22 I. C. C., 160, we found the distance of the St. Louis & San Francisco to Oklahoma City from St. Louis to be a fair basis upon which to figure rates on movements of live stock and packing-house products.

McAlester is 120 miles southeast of Oklahoma City, measured by the line of the Chicago, Rock Island & Pacific, and is served by two lines of railroad. It is reached from St. Louis by the lines of the Missouri, Kansas & Texas, distance 566 miles; and from Memphis by the Chicago, Rock Island & Pacific, distance 367 miles. In connection with the St. Louis & San Francisco the Chicago, Rock Island & Pacific furnishes a route to McAlester from St. Louis, distance 519 miles.

Muskogee is 62 miles northeast of McAlester by the line of the Missouri, Kansas & Texas and 175 miles east of Oklahoma City by the St. Louis & San Francisco. It is reached from St. Louis by the Missouri, Kansas & Texas, distance 504 miles. Muskogee is served by a branch line of the St. Louis & San Francisco, distance 457 miles from St. Louis. It is to be noted that Muskogee has no direct single line from Memphis except the St. Louis & San Francisco, distance 501 miles.

Clinton is in the western part of Oklahoma, 94 miles west of Oklahoma City, on the line of the Chicago, Rock Island & Pacific. It is connected with St. Louis by a branch line of the St. Louis & San Francisco, distance from St. Louis 637 miles.

A comparison of the rates, in cents per 100 pounds, now in effect on certain iron articles to the different points in Oklahoma from St. Louis, Pittsburgh, Memphis, and Birmingham is shown by the following table:

	Distance.	Woven-wire fence.	Beams and girders.	Bolts and nuts.	Bars, bands, and boilers.	Iron pipe.	Roofing and sheet iron.	Horse and mule shoes.	Wire nails.
To Muskogee from—									
St. Louis.....	457	37	42	37	37	34	37	37	37
Pittsburgh.....	1,077	52	55	51	51	55	51	51	52
Memphis.....	501	32	42	37	37	34	37	37	32
	393								
	752								
Birmingham.....	644	41	42	39	46	40	46	46	41
To Sapulpa from—									
St. Louis.....	439	40	47	40	40	35	40	40	40
Pittsburgh.....	1,059	58	60	59½	59½	57½	59	59½	58
Memphis.....	492	35	47	40	37	35	40	40	35
Birmingham.....	743	44	47	42	42	40	49	49	44
To Tulsa from—									
St. Louis.....	425	40	47	40	40	34	40	40	40
Pittsburgh.....	1,045	58	60	59½	59½	56½	59	59½	58
Memphis.....	506	35	47	40	37	34	40	40	35
Birmingham.....	757	44	47	42	42	40	49	49	44
To McAlester from—									
St. Louis.....	519	40	47	40	40	37	40	40	40
	566								
	1,139								
Pittsburgh.....	1,186	55	60	54	54	53	54	54	55
Memphis.....	367	35	47	40	40	37	40	40	35
Birmingham.....	618	44	47	42	42	40	49	49	44

	Distance.	Woven-wire fence.	Beams and girders.	Bolts and nuts.	Bars, bands, and boilers.	Iron pipe.	Roofing and sheet iron.	Horse and mule shoes.	Wire nails.
To Oklahoma City from—									
St. Louis.....	541	50	55	55	50	40	50	50	50
Pittsburgh.....	1,161	71	74	74	69	58	69	69	71
Memphis.....	487	45	55	55	50	40	50	50	45
Birmingham.....	738	53	55	55	50	40	50	50	53
To Clinton from—									
St. Louis.....	637	52	57	57	55	40	55	55	52
Pittsburgh.....	1,257	71	76	76	74	58	74	74	71
Memphis.....	581	47	57	57	55	40	55	55	47
Birmingham.....	832	53	57	57	55	40	55	55	53
To Altus from—									
St. Louis.....	688	52	57	57	55	40	55	55	52
Pittsburgh.....	1,308	71	76	76	74	58	74	74	71
Memphis.....	733	47	57	57	55	40	55	55	47
Birmingham.....	890								

Taking the rates on bolts and nuts from Pittsburgh as illustrative, it will be noted that beginning with Muskogee the rate is 51 cents; there is an advance to 59½ cents to Sapulpa and Tulsa; to McAlester the rate is 54 cents; it advances to 74 cents to Oklahoma City; and advances to 76 cents to Clinton and Altus.

The following table shows the rates, in cents per 100 pounds, on certain iron articles from Pittsburgh to the points named which were in effect in 1906:

From Pittsburgh to—	Woven wire fence.	Beams and girders.	Bolts and nuts.	Bands, bars, and boilers.	Iron pipe.	Roofing and sheet iron.	Horse and mule shoes.	Wire nails.
Muskogee.....	55	60	60	60	58	71	76	66
Sapulpa.....	55	60	60	60	58	71	76	66
Tulsa.....	55	60	60	60	58	71	76	66
McAlester.....	55	60	60	60	58	71	76	66
Oklahoma City.....	55	60	60	60	58	71	76	66
Clinton.....	55	60	60	60	58	76	76	66
Altus.....	55	60	60	60	58	76	76	66

From this table it will be seen that the rates on these articles were blanketed to all points in the state of Oklahoma, with the single exception of the rate on roofing and sheet iron.

It will further be noted from examination of these tables that since 1906 a readjustment of these rates has taken place and that the rates to points in eastern Oklahoma have been materially reduced, and that, at the same time, rates to Oklahoma City in some instances have been increased. It is asserted by the defendants that the readjustment was agreed to at the time by a representative of Oklahoma City. The record is not clear as to just what took place between the carriers and the representative of Oklahoma City at the time the alleged agreement was made, but it is certain that no agreement entered into at that time may now be relied upon for a justification of any undue prejudice to Oklahoma City that may be found to exist.

The defendants contend that the rates to points in the eastern part of Oklahoma, including McAlester, are influenced by water competition on the Arkansas River; that the rates to these points are based on Memphis rather than St. Louis; and that the conditions under which traffic is moved to Oklahoma City are less favorable than those under which traffic is moved to points in eastern Oklahoma.

We are not impressed with the force of the contention that rates to points in eastern Oklahoma are influenced by the rates to and from Memphis instead of St. Louis. The rate from Pittsburgh to Memphis on all iron and steel articles appears to be 25 cents per 100 pounds. Taking roofing and sheeting for our comparison, and adding to this Pittsburgh-Memphis rate the local from Memphis to eastern Oklahoma cities under consideration, and comparing such combination rates with the through rate quoted, we find:

To Muskogee:	
Combination (25 plus 37).....	62
Through rate.....	51
To McAlester, Tulsa, and Sapulpa:	
Combination (25 plus 40).....	65
Through rate.....	54
To Oklahoma City:	
Combination (25 plus 50).....	75
Through rate.....	69

From the comparison it appears that to Muskogee there is a difference between the combination rate and through rate of 11 cents; to McAlester the difference is also 11 cents; but to Oklahoma City the difference is only 6 cents.

The rate from Birmingham to Memphis on the same articles is 13 cents per 100 pounds; adding to this the same locals as above used to the same cities and comparing with the through rate from Birmingham, we find:

To Muskogee:	
Combination (13 plus 37).....	50
Through rate.....	46
To McAlester:	
Combination (13 plus 40).....	53
Through rate.....	49
To Oklahoma City:	
Combination (13 plus 50).....	63
Through rate.....	50

Bearing in mind that the distance from Birmingham to Oklahoma City is 120 miles greater than to McAlester and 13 miles less than to Muskogee, from this comparison it appears that when figured on Memphis the difference in the through rate and combination rate to Oklahoma City is 13 cents; whereas in the Pittsburgh calculation this difference was only 6 cents, although the same local from Memphis was used. From Birmingham to Muskogee and McAlester the

difference in both instances is 4 cents, while in the Pittsburgh calculation it was 11 cents. It appears that St. Louis or other Mississippi River crossings north as far as Dubuque are the natural as well as the usual gateways for shipments from Pittsburgh to Oklahoma points.

Considerable testimony was introduced at the hearing with respect to the effect of water competition on the rates to the points in the eastern part of the state. Again and again throughout the record there is pressed upon our attention what is called the "actual" and "potential" effect of transportation on the Arkansas River. The defendants point to this waterway as the justification of lower rates to the eastern Oklahoma points, and the representative of Muskogee insists that the location of that city near the banks of this river entitles it to even lower rates than it now enjoys. The Arkansas River was flowing between its banks in 1906 and previous to that year. Its waters, for aught this record shows, bore and were capable of bearing just as much commerce during the years when all points in Oklahoma took the same rates as they are capable of bearing to-day. Whatever may have induced the reduction of rates to the points east of Oklahoma City since 1906, we are quite certain it was not all due to the fact that the Arkansas River flowed through the eastern part of the state. The Arkansas River may or may not be navigable. Whether it is navigable now or whether it may be made navigable in the future are questions we need not here determine. We are convinced that were it ever so open to a flow of commerce to the doors of Muskogee merchants, the present adjustment of rates as between eastern Oklahoma points and Oklahoma City would not be justified.

It is also contended in behalf of the defendants that the McAlester rate was made by the Chicago, Rock Island & Pacific for the purpose of enabling McAlester to compete in intermediate territory with Fort Smith, a point not reached by the road. However this may be, and while the purpose of the making of the rates may have been to enable McAlester to compete with Fort Smith to the east, it at the same time gave to McAlester an opportunity to compete with Oklahoma City to the west. McAlester merchants can deliver iron articles within 16 miles of Oklahoma City at a better price than Oklahoma City merchants can furnish the same commodities. The distance from McAlester to Oklahoma City is 104 miles. This is said with regard to the respective through Pittsburgh rates. Such an adjustment of rates as this neutralizes whatever advantage of location and transportation facilities Oklahoma City may have. In other words, Oklahoma City enjoys none of the advantages which naturally accrue to it. It is served by more railroads than any of the points with which comparisons are made, and on shipments from Memphis it has a shorter single-line distance than Muskogee.

It appears from an examination of the respective rates on 46 other commodities from Pittsburgh to Oklahoma City and Muskogee that there is an average difference of five-tenths of 1 cent and that on the same commodities from St. Louis to these two cities the average difference is eight-tenths of 1 cent. It appears, further, that the differences in rates from Pittsburgh to Oklahoma City and to Clinton, the latter located in a territory of light tonnage and branch lines, range from 0 to 5 cents.

It is asserted that Oklahoma City and Wichita, Kans., take the same rates on iron and steel articles from Pittsburgh, and rates to both points bear a relation to the rates from Pittsburgh to Texas common points. We do not find that there is a fixed relation between rates generally on classes and commodities from defined eastern territory to Wichita and Oklahoma City. If such a relation did exist we do not conceive that it would justify these defendants in unduly preferring eastern Oklahoma points as compared with Oklahoma City.

From a consideration of all the facts of record we are of opinion and find that the rates now in effect on iron and steel articles as defined in Leland's I. C. C. No. 919 and set out in the complaint herein are unduly discriminatory and unjustly prejudicial against Oklahoma City and unduly prefer Sapulpa, Tulsa, McAlester, and Muskogee. Because the interests of various carriers are involved and the rate adjustment is unusually complicated, we are inclined to the opinion that the readjustment so as to fairly line up the rates on the articles in question from and to all the points involved should in the first instance be left to the defendants. The discrimination against Oklahoma City is marked and should be promptly removed. We do not mean to be understood by this as indicating that the rates to eastern Oklahoma points should be advanced to existing Oklahoma City rates. What we do mean is that there shall be such a readjustment of the rates as not to work out an undue preference to any Oklahoma point, distance and all other transportation conditions considered.

Accordingly the defendants will be expected to establish on or before May 1, 1914, rates from Pittsburgh, Chicago, and Birmingham, to the Oklahoma points involved which shall conform to the views herein expressed. If this is not done by the time indicated an appropriate order will be issued.

INVESTIGATION AND SUSPENSION DOCKET No. 284.
RATES ON CRUSHED STONE FROM McCOOK AND
THORNTON, ILL., TO STATIONS IN INDIANA AND
MICHIGAN.

Submitted November 15, 1913. Decided January 5, 1914.

1. By express provision of the amendment of June 18, 1910, to section 15 of the act to regulate commerce, the burden of justifying an advance in rate made after January 1, 1910, is placed upon carrier.
2. The fact that contracts have been entered into on the basis of a lower rate will not of itself preclude the raising of such rate.
3. Evidence here held not to justify increase in rate made under suspended tariff.

Adrian L. Courtright for Public Service Commission of Indiana, Crown Point Construction Company, William Ahlborn Construction Company, and Downey & Portz Construction Company.

Jesse B. Barton for Baltimore & Ohio Chicago Terminal Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The tariff under suspension is designated as follows: Baltimore & Ohio Chicago Terminal Railroad Company, supplement No. 6 to I. C. C. No. 28, filed to become effective July 21, 1913, and suspended until May 18, 1914.

The protest here is filed by the Public Service Commission of Indiana, and at the hearing the following additional protestants appeared: Crown Point Construction Company, William Ahlborn Construction Company, and Downey & Portz Construction Company. These latter protestants are engaged in the construction of streets and roadways in Lake county, Ind. The crushed stone used in their work is shipped from quarries located at McCook, Ill., and is received at Munster, Ind., on the line of the Chicago, Indianapolis & Louisville Railway Company, hereafter referred to as the Monon.

On July 6, 1912, the Baltimore & Ohio Chicago Terminal Railroad Company published supplement No. 3 to its tariff, I. C. C. No. 28, carrying a joint rate of 45½ cents per ton on crushed stone from McCook, Ill., to Munster, Ind. This rate remained in effect until May 16, 1913, when in supplement No. 4 to Baltimore & Ohio Chicago Terminal Railroad Company's tariff I. C. C. No. 28 the joint through

rate was made 35½ cents. This reduction is explained by the respondent Baltimore & Ohio Chicago Terminal Railroad Company on the ground that it appeared in revising this tariff that the rates to this section via the line of each of the competing carriers was 35½ cents, and it was taken for granted that the rate to points on the line of the Monon similarly situated should take the same rate.

It appears that several carload shipments of crushed stone were made and billed at this through rate of 35½ cents, with a division of 15½ cents to the terminal company and 20 cents to the Monon, but when these cars were delivered to the Monon on such billing this road refused to accept the cars until the shipments were so billed that it received as its division of the rate, 30 cents per ton. The junction point on this line is Hammond, Ind., which is 22 miles distant from McCook; but it appears that delivery is made at the yards, some 2 or 3 miles south of Hammond. The haul from there into Munster is 2 or 3 miles, for which a division of 30 cents is demanded by the Monon, leaving the terminal company 5½ cents for its haul of approximately 26 miles.

The suspended tariff was published with the idea of making the joint rate high enough to reasonably compensate the terminal company for its share of this haul, and it appears that 15½ cents is all that is claimed by this respondent as a reasonable rate for its part of the service.

There is considerable discussion by counsel for the respondent on the question of burden of proof in this case, and the position is taken that the burden is on the protestants to establish the unreasonableness of the suspended rate; *Fairmont Creamery Co. v. C., B. & Q. R. R. Co.*, 22 I. C. C., 252, is cited. There was no discussion of the point on which it is cited. Though submitted November 20, 1911, said case involved a rate increased during the period from March 1 to September 5, 1909, prior to the act of June 18, 1910, which, by amendment to section 15 of the act to regulate commerce, places the burden on the carrier to justify any increase in a rate made since January 1, 1910. The burden here is on the carriers.

There is considerable testimony in the record and discussion in briefs of counsel on the effect of certain existing contracts based on the lower rate, and the force of such contracts as a bar to increasing the rate. The fact that contracts have been entered into on the basis of a lower rate will not of itself preclude the increasing of such rate. *Southern Pacific Co. v. I. C. C.*, 219 U. S., 433, 450.

It appears that a rate of 35½ cents is applied to this section by all competing lines, and it seems that the only reason for increasing the rate now in effect was simply to enable the terminal company to

get what it deemed a fair return for its share of the services rendered.

From all the facts and circumstances presented on the record, it is our conclusion that the respondents have not justified the proposed increase in the rate on crushed stone from McCook, Ill., to Munster, Ind., carried in the tariff under suspension. The rate at present in effect must therefore be maintained for the future. As to the other rates in the suspended tariff the order of suspension will be vacated. The proper division of the rate now in effect will be left to the carriers affected to adjust as they see fit. It would seem, however, from the record as it now stands, that the division of 15½ cents claimed by the terminal company is a just and reasonable charge in and of itself.

An order will be entered in accordance with the foregoing opinion.

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No. 5933.

**IN THE MATTER OF THE RECEIVERSHIPS OF THE ST.
LOUIS & SAN FRANCISCO RAILROAD COMPANY AND
THE CHICAGO & EASTERN ILLINOIS RAILROAD COM-
PANY.**

January 20, 1914.

In response to resolutions of the Senate, the facts and circumstances concerning the purchase of the Chicago & Eastern Illinois and the St. Louis, Brownsville & Mexico railroads by the St. Louis & San Francisco Railroad Company, with other details, are submitted in the following report, without expressions of opinion or recommendations by the Commission.

REPORT OF THE COMMISSION TO THE SENATE OF THE UNITED STATES.

BY THE COMMISSION:

The Commission has the honor to submit the following report in compliance with resolutions of the Senate¹ dated June 10, and July 2, 1913:

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, GENERAL FACTS.

A receiver for the St. Louis & San Francisco Railroad Company, hereinafter referred to as the Frisco, was applied for on May 27, 1913, in a petition signed by James Campbell, vice president and director of that company and president of the North American Company, of New York. The basis of the petition was default on a six months' 6 per cent note issued to the North American Company by the Frisco, due April 21, 1913, for \$625,000, upon which a payment of \$225,000 was made subsequently to its due date and prior to May 27, 1913.

While this indebtedness was the nominal cause of the receivership, the true cause was the inability of the Frisco to meet the payment of the principal of its two-year 5 per cent notes, dated June 1, 1911, due June 1, 1913, amounting to \$2,250,000, which had been sold to F. S. Moseley & Company, of Boston. These notes were secured by \$2,500,000 par value of Frisco-Chicago & Eastern Illinois Railroad Company common-stock trust certificates, and \$1,490,000 Frisco-Kansas City, Fort Scott & Memphis preferred-stock trust certificates, which were pledged as collateral security therefor with the Old Colony Trust Company of Boston.

The collateral underlying the note upon which the default occurred was deemed insufficient by the holders thereof, and on May 20, 1913, on the demand of Campbell that the Frisco deposit additional collat-

¹ Reprinted in appendix, see p. 210.

eral, \$5,000,000 of the capital stock of the New Mexico & Arizona Land Company and \$200,000 in Frisco-New Orleans, Texas & Mexico division bonds were placed under the note as additional security. The stock of the New Mexico & Arizona Land Company stood jointly in the names of W. F. Evans and F. H. Hamilton, respectively counsel and treasurer of the Frisco. The lands consisted of more than 1,000,000 acres, located in the states named. The certificates were indorsed for transfer, the resignations of F. H. Hamilton and Alexander Douglas, the latter being vice president in charge of the accounting department, as directors were effected upon instructions from vice president Hillard, and J. P. Newell and W. F. Reed, employees of James Campbell, were elected directors in their stead.

Had the Campbell note been the only obligation that the Frisco was compelled to meet it doubtless would have liquidated the indebtedness, as the cash balance of the company on May 27, 1913, amounted to \$603,859.06. But owing to the other maturing obligations which it was unable to meet, a receivership, the inevitable result of the Frisco's financial operations, and which at best could be deferred but for a short time, was applied for.

The inability of the Frisco to meet its obligations seems to have been apparent for some time prior to the application for a receivership. Strenuous efforts were made by its officers to obtain funds necessary to tide over its financial difficulties from day to day. Money was borrowed from all available sources, until it appeared that every avenue through which assistance might be secured had been exhausted. All marketable securities were either sold or pledged as collateral under the numerous loans. A statement prepared by the treasurer of the company dated April 19, 1913, shows that the estimate of receipts and requirements of the company over May 1 would result in an apparent deficiency of \$749,880, and it appears that there were in the hands of that official on April 12 unpaid vouchers aggregating \$1,681,000. On May 27 the unpaid vouchers amounted to \$2,233,635.59.

Notwithstanding this apparent exhausted financial condition and inability to meet obligations without recourse to further borrowing the Frisco sold to Speyer & Company, of New York, shortly before the receivers were appointed, \$3,000,000 of its general lien 5 per cent bonds, French series, at a price of 78. The dates of such sales were:

April 24, 1913.....	\$1,000,000
May 2, 1913.....	1,000,000
May 10, 1913.....	500,000
May 14, 1913.....	500,000

Total.....	3,000,000
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The sale of securities to the investing public through the bankers at a time when every appearance indicated the insolvency of the

issuing company, invites and warrants condemnation of all those who assisted or participated in such sale. Speyer & Company should have been aware of the poverty of the Frisco and of its difficulties in obtaining funds, as they advanced that company on April 24 \$725,000 on its demand note, and \$50,000 on its demand note dated April 29, and applied the proceeds of the sale of \$1,000,000 of these bonds on May 2 to the liquidation of these notes.

While the Frisco was compelled to borrow funds from every available source it continued its policy of advancing money to companies in Texas, as is evidenced by advances made to A. T. Perkins, trustee of the Brownsville Street & Interurban Railroad and San Benito & Rio Grande Valley Railway. The sums advanced to him during the fiscal year 1913 to the date of the receivership amounted to \$924,464.11, while \$110,297.53 was also advanced to him for the construction of the Victoria and the Heyser-Austwell extensions on the lines of the St. Louis, Brownsville & Mexico Railway.

Under date of May 24, 1913, the Frisco paid to A. T. Perkins as trustee of the New Iberia Syndicate, \$50,000 in cash, and executed its one-year 6-per-cent note dated May 1, 1913, for \$1,493,088.83 and its 6-per-cent demand note for \$950,000, as the purchase price of the New Iberia & Northern Railroad and the Iberia, St. Mary & Eastern Railroad, in conformity with an agreement dated September 1, 1911. The Frisco had acquired in May, 1912, the syndicate interest of B. F. Yoakum in these properties by purchasing his subscription to the syndicate plus 7 per cent interest thereon, amounting to \$212,698.24. Mr. Yoakum was paid \$12,698.24 in cash and was given a note for \$200,000, dated May 6, 1912, which was paid in cash November 6, 1912.

The difficulties of the Frisco were of a financial and not of an operating character, as, despite the increase in the net operating income from \$2,332,158.52 for the year ended June 30, 1897, to \$11,677,437.33 for 11 months of the fiscal year 1913, the surplus of income available for dividends in 1897 was \$331,065.94, while on May 27, 1913, there was a deficit of \$1,069,915.60. Had it not been for book charges covering the loss on the operation of south Texas lines for 11 months of the fiscal year 1913, amounting to \$1,219,293.21, and amortized discount of \$943,222.38, there would have been a surplus of \$1,092,599.99, or an increase in surplus for the 1913 period over the year 1897 of \$761,534.05. The operating income for the 11 months of 1913 was \$9,345,278.81 greater than that for the full year of 1897.

The absorption of the increased net operating income is accounted for by charges of \$3,140,610.94, covering the cost of the lease of the Kansas City, Fort Scott & Memphis Railway, the Kansas City, Memphis & Birmingham Railroad, and the Kansas City, Memphis
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Railway & Bridge Company; and by the increase in interest on funded debt from \$1,994,488 for the year ended June 30, 1897, to \$10,684,788.55 as of June 30, 1913, an increase of \$8,690,300.55.

The gross earnings per mile of road operated increased from \$5,157 for the year ended June 30, 1897, to \$8,306 for the 11 months ended May 27, 1913, and the net earnings per mile increased during the same period from \$2,159 to \$2,733, an increase of \$574, while the funded debt interest per operated mile increased from \$1,716 for the year ended June 30, 1897, to \$2,253 for the year ended June 30, 1913, an increase of \$537.

The ratio of operating expenses to gross revenues increased from 58.30 per cent for 1897 to 67.17 per cent for 1912, which ratio for the last period does not indicate a relatively excessive cost of operation.

Freight earnings per mile of road increased from \$3,857.77 for the year ended June 30, 1897, to \$5,465.31 for the year ended June 30, 1912, while during the same period the revenue per ton-mile decreased from \$0.01111 to \$0.00992. An increase in traffic and operating revenues had been secured, but the benefits thereof had been absorbed by increased interest charges.

The insolvency of the Frisco may be attributed to various causes.

First. Disproportionate capitalization.

Second. The acquisition of new lines.

Third. The financing by the Frisco of the New Orleans, Texas & Mexico Railroad and other south Texas lines.

Fourth. The desire for an entrance into Chicago, Ill., resulting in the assumption of heavy fixed charges in the acquisition of the stock of the Chicago & Eastern Illinois Railroad.

Fifth. The sale of its securities at prices so low as to indicate a deplorably weakened credit or an extravagant arrangement with bankers to whom large profits accrued in the purchase of the bonds and the subsequent sale of same to the public.

Sixth. Miscellaneous causes, among which are the payment of dividends upon its preferred stock in spite of its weakened credit and need of money, poor investments and expensive rentals, among which are the investment in the New Orleans Terminal Company, stock in the Kirby Lumber Company, and rentals paid the Crawford Mining Company.

DISPROPORTIONATE CAPITALIZATION.

The total capital of the Frisco on May 27, 1913, amounted to \$295,633,933.72, of which \$51,364,100 was capital stock and \$244,269,833.72 was funded debt including equipment trust notes. Capital stock was 17.37 per cent of the total capital liability, while funded debt amounted to 82.63 per cent.

From the following comparison it will be observed that the interest-bearing liabilities of the Frisco exceeded the stock liability by 375 per cent and were wholly disproportionate when compared with the capitalization of other carriers, including those in the territory west of the Mississippi River.

Railroad.	Funded debt.	Capital stock.	Ratio of funded debt to capital liability.
Southern ¹	\$230,213,000.00	\$180,000,000.00	56.12
Kansas City Southern ¹	47,926,000.00	51,000,000.00	48.45
Santa Fe.....	239,965,045.00	284,373,500.00	54.45
St. Louis Southwestern.....	60,366,760.00	36,500,000.00	62.32
Missouri, Kansas & Texas.....	126,682,346.19	76,300,300.00	62.41
Erie.....	230,654,187.80	176,271,300.00	56.68
Pennsylvania.....	260,803,607.33	453,877,900.00	36.49
Rock Island.....	225,125,000.00	74,877,200.00	75.04
Total.....	1,521,735,936.32	1,333,200,200.00	53.65

¹ June 30, 1913; other quotations as of June 30, 1912.

The excessive issue by the Frisco of interest-bearing securities instead of capital stock may be due in part to the requirement of the state of Missouri that capital stock of railroads may not be sold at less than par, while no such restriction is placed upon the sale of bonds. It is also customary in issuing additional capital stock to deal with the stockholders for a portion, at least, of the new issue, while the disposition of bonds is usually a transaction with banks or bankers to whom profits accrue.

ACQUISITION OF NEW LINES.

In 1897 the officials of the Frisco entered upon an era of territorial expansion and acquisition of new lines which apparently were constructed with the understanding or confident belief that the Frisco would purchase them upon completion. The mileage of the Frisco on June 30, 1897, consisted of 1,162 miles, the property having been acquired from the reorganization committee in connection with the receivership of 1896.

During the 10 years to June 30, 1907, 15 additional lines, located principally in the State of Oklahoma, were purchased. The mileage thus acquired aggregated 2,375 miles. Some 15 miles of the original mileage were turned over to the Paris & Great Northern; making a total owned mileage, including new extensions, of 3,522 miles. These additional lines were acquired at a cost of approximately \$62,000,000. Since 1907 the expansion of the Frisco is represented by an addition of 15 miles of leased lines and trackage. This indicates that the ability of the Frisco to finance additional construction had reached its limit, or that the policy of the company had been changed.

Owing to the consolidation of the revenues and expenses of acquired lines with those of the parent company, an effort to determine whether or not the lines purchased have been profitable investments must be limited to an analysis of the records of the Frisco as a whole.

The sums paid for the properties in excess of the actual construction costs of same are not known. The costs that are shown in the records of the Frisco represent merely the cost to that company. The records of the bonuses, grants, awards, donations, and syndicate profits are presumably contained in the records of the syndicates that furnished the funds for the construction companies, and the complete data were not available in this examination. The properties thus acquired are detailed with others under the caption "franchise and property" in another section of this report.

In the acquisition of those properties divers means were employed to finance the transactions. In some cases cash was paid for the securities of the company purchased, the Frisco being eventually reimbursed for such expenditures by receiving from the trustee of the refunding or the general lien mortgages, upon a certification made to the trustee by the officials of the Frisco, bonds to equal the purchase price of the new line or in such amount as was provided in the terms of the mortgage.

In some instances the securities of the Frisco were exchanged for those of the railroad company that had constructed the line purchased. In the acquisition of the St. Louis, Memphis & Southeastern Railroad the bonds of that company and the underlying issues of its constituent companies, approximating \$16,000,000 outstanding at the time, were assumed by the Frisco.

It appears of record through statements secured from the St. Louis Union Trust Company, syndicate manager for syndicates that financed the construction of a number of properties which were subsequently sold to the Frisco, and which statements were in part supported by the testimony of witnesses, that a number of lines acquired by the Frisco were purchased by that company at prices which afforded large profits to the syndicate subscribers and trust companies. Among the subscribers to these syndicates were various officials of the Frisco, including B. F. Yoakum, chairman of the board of directors, as well as officers of the St. Louis Union Trust Company. A description of the syndicate operations with respect to financing the construction of a number of lines and the sale of such properties to the Frisco, including the names of the officials of the latter company who were subscribers to and participated in the profits of the syndicate, follows.

OKLAHOMA CITY & WESTERN RAILROAD COMPANY.

A syndicate composed of 51 members was formed October 15, 1901, with a proposed subscription of \$2,148,000 for the construction of this line. Of the original amount proposed, \$2,097,043.95 was subscribed, and on the completion of the line on March 10, 1903, the property was sold to the Frisco at a price which netted the subscribers a profit of \$369,278.82. The officers of the Frisco who participated as subscribers in this syndicate were:

Name.	Amount subscribed.	Profit.
C. H. Beggs.....	\$15,000	\$2,223.91
L. F. Parker.....	20,000	2,963.88
J. F. Hinckley.....	20,000	2,963.88

ST. LOUIS, SAN FRANCISCO & NEW ORLEANS RAILROAD COMPANY.

A syndicate was formed in July, 1902, for the purpose of financing the construction of this line, with a proposed subscription of \$5,300,000, all of which was paid in. The syndicate was dissolved in November, 1903, and the subscribers were given \$5,888,888.88 in 4 per cent bonds of the St. Louis, San Francisco & New Orleans Railroad Company and \$1,060,000 of the preferred stock of the same company. These securities were later refunded through subsequent security issues of the Frisco on the basis of 90 for the bonds and 79 for the preferred stock of the St. Louis, San Francisco & New Orleans Railroad, resulting ultimately in a profit to the syndicate of \$837,400. The common stock, amounting to \$6,021,000, was delivered to the Frisco without any further compensation. The Frisco officials and directors connected with this syndicate were:

Name.	Amount subscribed.	Profit.
Nathaniel Thayer.....	\$400,000	\$63,200
H. C. Pierce.....	500,000	79,000
Blair & Co.....	850,000	134,300
James Campbell.....	175,000	27,650
W. K. Birby.....	50,000	7,900

ST. LOUIS & GULF RAILROAD COMPANY.

A syndicate composed of 50 members was formed April 10, 1902, to purchase this property, with a proposed subscription of \$2,700,000, all of which was paid in. B. F. Yoakum was the only official of the Frisco interested in this syndicate. He subscribed and paid in \$75,000, and received \$113,187.45 as his portion at the dissolution of the syndicate. In addition to this amount, he obtained an additional profit of \$28,000 through the purchase of nine small properties

which were consolidated with the St. Louis & Gulf Railroad, and which he with others had purchased and sold to the syndicate.

The St. Louis & Gulf Railroad was subsequently consolidated with the St. Louis, Memphis & Southeastern Railroad and sold to the Frisco, the latter company assuming the bonds outstanding against the property.

The syndicate received \$4,920,000 of the bonds of the St. Louis & Gulf Railroad, \$173,000 of which the syndicate used to defray its expenses. The balance was exchanged for $4\frac{1}{2}$ per cent bonds of the St. Louis, Memphis & Southeastern Railway on a basis of \$903.33 for each bond of the old company, netting to the syndicate bonds of the St. Louis, Memphis & Southeastern Railway of a par value of \$4,288,123.17, which were marketed through Harvey Fisk & Company for \$4,085,696.52 cash. This amount was distributed to the syndicate subscribers, resulting in a profit to them of \$1,385,696.52.

ST. LOUIS & OKLAHOMA CITY RAILROAD COMPANY.

A syndicate composed of 35 members was formed December 21, 1897, for the purpose of financing the construction of this railroad. The proposed amount of \$1,000,000 was paid in, and the property was sold to the Frisco in April, 1899, for \$1,868,700, \$264,494.58 of which was due contractors for construction of the road and for miscellaneous expenses. Interest and cash received from other sources aggregated \$51,944.58, and \$1,656,150 was distributed to the subscribers, resulting in a profit to them of \$656,150.

It does not appear of record that any officials of the Frisco were connected with this syndicate, or with the Indianola Construction Company, which constructed the line.

ST. LOUIS, OKLAHOMA & SOUTHERN RAILWAY COMPANY.

An agreement was executed under date of January 10, 1900, between Johnson Brothers & Faught and the St. Louis, Oklahoma & Southern Railway for the construction of this line. The contractors were to receive \$5,500,000 in capital stock, and bonds in the sum of \$22,500 per mile, but not to exceed the sum of \$4,500,000 in bonds. On January 23, 1900, the contractors agreed to sell these bonds to three trust companies and two individuals, one of whom was B. P. Cheney, a director of the Frisco. This contract provided that the trust companies and individuals referred to were to take the bonds at $78\frac{1}{2}$ per cent of their par value, payment to be made on call as the work progressed. The bonds were guaranteed by the Frisco, for which it received the capital stock without further compensation. The amount subscribed by B. P. Cheney was \$389,026.37, his proportion of the bonds being \$495,575.

The bonds of the St. Louis, Oklahoma & Southern Railway were assumed by the Frisco in the acquisition of that line and were subsequently refunded by the Frisco through its issue of refunding bonds on the basis of 95 for the bonds of the old company. This transaction resulted ultimately in a profit to the trust companies and individuals involved of \$719,574.90.

ARKANSAS VALLEY & WESTERN RAILROAD COMPANY.

A syndicate composed of 61 members was formed June 16, 1902, to purchase the securities of the Arkansas Valley & Western Railroad. The proposed subscription was \$3,190,000, of which \$3,046,635 was paid in by the subscribers. The property was sold to the Frisco on March 1, 1904, for \$3,825,000, payable one-third in cash and two-thirds in notes, which were subsequently paid in cash. In the purchase price, however, \$215,865 was due the contractor, and \$87.57 was due the syndicate for expenses, leaving, of the purchase price and interest on syndicate deposits, to be divided among the subscribers \$3,636,402.32, a profit to the subscribers of \$589,767.32.

One director and five employees of the Frisco were subscribers to this syndicate, the amounts of their subscriptions and profits thereon being as follows:

Name.	Amount subscribed.	Profit.
B. P. Cheney.....	\$59,493.72	\$11,515.79
C. H. Beggs.....	29,746.86	5,757.89
F. H. Hamilton.....	9,518.96	1,842.57
J. F. Hinckley.....	29,746.86	5,757.89
L. F. Parker.....	118,987.43	23,011.56
W. B. Spaulding.....	29,546.87	5,757.88

NEW IBERIA & NORTHERN RAILROAD COMPANY AND IBERIA, ST. MARY & EASTERN RAILROAD COMPANY.

These lines were constructed with funds contributed by or through a syndicate composed of 20 members as follows: B. F. Yoakum, J. D. Filley, P. M. Johnson, Jules M. Burgieres, W. K. Bixby, Dennis M. Burgieres, T. H. West, Ernest Burgieres, Edward Mallinckrodt, J. B. Leveret, R. S. Brookings, B. A. Oxnard, Wm. E. Guy, W. G. Dufour, N. A. McMillan, Chas. Janvier, F. M. Welch, H. G. Pharr, A. T. Perkins, and Jos. Birg. A. T. Perkins was syndicate manager. Of the \$2,000,000 necessary to construct the line approximately \$1,000,000 was subscribed in cash, and the balance, amounting to \$1,100,000, was secured from the St. Louis Union Trust Company of St. Louis, Mo., and the Canal Louisiana Bank of New Orleans, La., upon notes of the syndicate subscribers.

On September 1, 1911, an agreement was entered into between the syndicate manager and C. W. Hillard as trustee, for the sale by
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the syndicate manager and the purchase by the trustee of the capital stock and the properties of the New Iberia & Northern Railroad and the Iberia, St. Mary & Eastern Railroad, these lines running in a southerly direction from a connection with the New Orleans, Texas & Mexico Railroad at Port Barre, La. The Frisco guaranteed the full performance of all the obligations on the part of the trustee and in case of his failure so to do was to assume and perform them.

An amount slightly less than \$2,000,000 was expended on the properties, and on May 24, 1913, the capital stock and properties of these two companies was purchased by the Frisco for \$2,493,088.83. The Frisco gave in payment its 6 per cent demand note for \$950,000 dated May 1, 1913, its one year 6 per cent note similarly dated for \$1,493,088.83, and \$50,000 in cash. It pledged as security under the notes the stock of the companies purchased, properly assigned, and the equity of the Frisco in all securities and real estate located in Dallas and Beaumont, Tex., pledged with the St. Louis Union Trust Company as security for notes of the Frisco held by that company. The value of the equity referred to has been estimated to be approximately \$750,000.

The subscription of B. F. Yoakum to the New Iberia & Northern Railroad and Iberia, St. Mary & Eastern Syndicate amounted to \$320,000, on which payments were made amounting to \$190,000. On December 20, 1911, the board of directors of the Frisco authorized the purchase for account of the Frisco of B. F. Yoakum's interest plus 7 per cent, which was effected on May 6, 1912, by a cash payment of \$12,698.24 and a 6 months note for \$200,000.

The profits to the syndicate subscribers on the sale of these properties to the Frisco amount to \$500,000, in addition to which they retain an interest in unpaid bonuses of about \$100,000 which will further increase the profits to the subscribers to the extent of the amounts collected. A liquidation of the syndicate has not yet been effected and the profits referred to are based upon the realization of the par value of the Frisco notes.

Profits of \$3,011,928.95 accrued to the syndicate subscribers who financed the construction of the St. Louis, Brownsville & Mexico Railway, and \$375,000 was the amount of profit received by the Gulf Construction Company for financing part of the construction of the Colorado Southern, New Orleans & Pacific Railroad. The operations of the syndicate and the construction company with respect to these two properties are more fully described under the captions of the St. Louis, Brownsville & Mexico Railway, and the New Orleans, Texas & Mexico Railroad in later chapters of this report.

A summary of the amounts subscribed by syndicate subscribers and advanced by trust companies in the construction of a number of properties, and the profits realized by syndicates and trust companies on the sale thereof to the Frisco, follows:

Name of railroad.	Amount paid in.	Profit.
Oklahoma City & Western.....	\$2 097, 043. 95	\$369, 278. 63
St. Louis, San Francisco & New Orleans.....	5, 300, 000. 00	837, 400. 00
St. Louis & Gulf.....	2, 700, 000. 00	1, 385, 096. 52
St. Louis & Oklahoma City.....	1, 000, 000. 00	656, 150. 00
St. Louis, Oklahoma & Southern.....	3, 423, 432. 10	719, 574. 90
Arkansas Valley & Western.....	3, 046, 635. 00	589, 767. 32
New Iberia & Northern.....	2, 000, 000. 00	600, 000. 00
St. Louis, Brownsville & Mexico.....	3, 981, 000. 00	3, 011, 928. 95
Colorado Southern, New Orleans & Pacific.....	3, 000, 000. 00	375, 000. 00
Total.....	26, 548, 111. 05	8, 444, 796. 51

SOUTH TEXAS LINES.

Acquiring control of the south Texas lines, which, by the use of trackage rights over parts of several other lines of railroad, form a through route from New Orleans, La., to Brownsville, Tex., and which had no physical connection with the Frisco lines, appears to have been a disastrous move for the Frisco. Through the Colorado Southern, New Orleans & Pacific Railroad, and its successor, the New Orleans, Texas & Mexico Railroad, the Frisco advanced to these companies approximately \$33,000,000 for the construction of new lines, the acquisition of securities of existing lines forming the through route, and the payment of interest on bonds secured by the property of the New Orleans, Texas & Mexico Railroad.

Of the amount thus advanced, approximately \$5,000,000 is still unliquidated, being evidenced by notes and accounts in favor of the Frisco due from the New Orleans, Texas & Mexico Railroad. The Frisco has received in part reimbursement of these advances \$28,500,000 of the bonds of its issue known as the Frisco-New Orleans, Texas & Mexico division bonds, which are a direct lien upon the property of the New Orleans, Texas & Mexico Railroad, and an indirect lien on other properties controlled by that company through ownership of stocks and bonds, which securities are pledged as additional security under the mortgage. Of the bonds so received by the Frisco all but about \$500,000 were sold by it at prices ranging from 90 to 91. The discount thereon amounted to \$3,130,650, which, added to the amount still due from the south Texas lines, would indicate a loss to the Frisco of over \$8,000,000 upon its investment in those companies.

The Frisco also has investments in what are known as its north Texas lines. These have not been as unprofitable as the south Texas lines venture. However, the St. Louis, San Francisco & Texas Rail-

road is indebted to the Frisco in the sum of \$2,122,011.61, representing unliquidated freight traffic balances dating from 1908 to May 27, 1913, \$1,068,158.69 of which is evidenced by notes, and the remainder by accounts.

ACQUISITION OF CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY.

The desire of the Frisco for an entrance into the city of Chicago resulted in the purchase, in 1902, of the common and preferred stock of the Chicago & Eastern Illinois Railroad Company by the issuance of Frisco stock trust certificates upon the basis of \$150 for the preferred stock and \$250 for the common stock of the Chicago & Eastern Illinois. In order to meet the fixed charges upon its stock trust certificates, it was essential that the Frisco should receive in dividends from the Chicago & Eastern Illinois Railroad 6 per cent upon the preferred stock and 10 per cent upon the common stock each year. On the preferred stock 6 per cent was paid each year. The dividend on the common stock has been sufficient to meet the interest requirement on the stock trust certificates in but three years. The resultant net loss on the common stock amounted as of May 27, 1913, to \$1,710,388, which amount the Frisco paid in interest upon its common-stock trust certificates, held by the public, in excess of the dividends received upon the Chicago & Eastern Illinois common stock.

DISCOUNT.

The discount on bonds and notes other than short-term notes issued by the Frisco and lines which it controls, including the Frisco issue of bonds on the New Orleans, Texas & Mexico Railroad, and the premiums paid on retirement of underlying issues, aggregated \$32,152,602.07. Premiums amounting to \$1,486,852.25 were received on a series of refunding bonds and notes, leaving the net amount so paid \$30,665,749.82. The payment of this enormous amount of discount in 12 years must be deemed to be due to one of two causes: (a) That the credit of the Frisco was very poor; or (b) that bankers obtained the securities at prices which may or may not have been as high as could have been obtained from those not directly interested in the financing of the Frisco.

The Rock Island secured control of the Frisco in 1903 through the purchase of the Frisco common stock, and retained such control until 1909, when it disposed of its holdings to B. F. Yoakum, Edwin Hawley, and others. During that period the credit of the Rock Island was never extended to the Frisco, though benefits doubtless accrued to the owning company through traffic relations and possibly favorable divisions of rates. During the six years of Rock Island control the Frisco issued more than \$71,000,000 in short term notes, all of which were liquidated within the same period except \$1,641,329.12.

During the same period the net increase in the funded debt, including equipment trusts, was \$78,000,000.

The securities of the Frisco issue, and those of the Kansas City, Fort Scott & Memphis Railway, a leased line absolutely controlled by the Frisco through stock ownership, brought prices ranging from 62½ to 98, the former price being secured on a sale of Kansas City, Fort Scott & Memphis Railway refunding 4 per cent bonds in 1908, and the latter price being obtained for an issue during September, 1912, of two-year 6 per cent notes, amounting to \$2,600,000, secured by collateral having a face value of over \$8,000,000, and the pledge of the Frisco's entire interest in the south Texas lines.

Within the widest possible range of reasonable charges to the public, no transportation company, constructed and living upon borrowed capital, can long survive a situation in which it sells securities at 62½ cents on the dollar and pays interest on the par value thereof. At 4 per cent the \$30,665,749.82 of net discounts and commissions carried by the Frisco represents an annual expenditure of \$1,226,630 for interest upon money which it never received. The accounts show that the securities were sold at prices higher than those above quoted, but commissions varying from 1 to 2½ per cent, paid to the bankers, aggregated more than \$3,000,000.

DIVIDENDS.

During all these years, while its securities were sold under heavy discounts and while it was borrowing funds to meet its obligations, the Frisco consistently paid annual dividends of 4 per cent upon its \$5,000,000 of first preferred stock, an annual charge of \$200,000. The last of such dividends was declared for the quarter ended March 31, 1913. Dividends on the second preferred stock were discontinued in 1906. Thus this company, whose securities were discounted as high as 37½ per cent, apparently attempted to maintain a prosperous appearance by disbursing dividends which were not in fact earned. It is claimed that these dividends were paid in order to hold the confidence of the public and the bankers. In financing enterprises of this nature bankers would not be strongly influenced by the payment of such dividends. They would consider other elements affecting the financial condition of the company and having a bearing upon the ability of the company to properly earn the dividends paid. The public would not be so well able to protect itself.

INVESTMENT IN THE NEW ORLEANS TERMINAL COMPANY.

The New Orleans Terminal Company is a corporation owning and operating terminals, wharves, and warehouses in the city of New Orleans, La. Its capital consists of \$2,000,000 of stock and \$14,000,000

of 4 per cent bonds. One-half of the capital stock is owned by the Frisco and one-half by the Southern Railway Company. These two companies have indorsed the bonds of the terminal company, guaranteeing the principal and interest thereon.

The Southern Railway Company makes no direct use of the property of the terminal company. The Mobile & Ohio Railroad, the New Orleans, Texas & Mexico Railroad, the New Orleans, Mobile & Chicago Railway, the New Orleans & Northeastern Railroad, the New Orleans Great Northern Railroad, and the Louisiana Railway & Navigation Company use the terminal as tenants.

The Frisco has no line into New Orleans and therefore does not use the terminal property. Its proportion of the terminal's interest charge is \$280,000 per annum, and it receives less than \$50,000 as its portion of the revenues of the terminal property. The Frisco reduces its portion of the interest charge by assessing approximately 15½ per cent of it against the New Orleans, Texas & Mexico Railroad, on the basis of the proportion which the total mileage of the New Orleans, Texas & Mexico Railroad bears to the total mileage of the Frisco system. This leaves, in round figures, a net charge of \$180,000 per annum against the income of the Frisco as the cost of its investment in the terminal property, which, as stated, it does not use and from which it derives no apparent benefit.

INVESTMENT IN STOCK OF THE KIRBY LUMBER COMPANY.

During the month of January, 1903, three notes were executed by the Kirby Lumber Company for \$200,000 each, drawn to the order of B. F. Yoakum, James Campbell, and Henry Clay Pierce, for money advanced by them to the lumber company. Shortly thereafter these notes were purchased by the Frisco at their face value and interest, and subsequently they were surrendered to the lumber company as part of the purchase price of 8,150 shares of the preferred stock of the lumber company at \$75 per share. In July, 1903, the Frisco purchased 8,500 additional shares of this stock, thereby making its total investment therein \$1,248,750. The preferred stock of the lumber company outstanding totaled \$10,000,000.

The Frisco paid J. W. Bailey \$25,000 for his services in acquiring this stock, and charged that amount to the cost of the securities of the lumber company.

No dividends have been received upon this stock by the Frisco. At 4 per cent the interest upon this investment would approximate \$50,000 per annum, and on that basis the loss thereon amounts to about \$500,000. It is possible, however, that this was compensated for in some measure by securing traffic for the Frisco through its influence as a stockholder in the lumber company.

In the purchase of this stock the Frisco received as a bonus 2,775 shares of the common stock of the same company, which it subsequently sold for \$50,000, this, with several minor adjustments, left the net cost of the 16,650 shares \$1,226,208.

RENTALS PAID CRAWFORD COUNTY MINING COMPANY.

Among the unprofitable contracts entered into by the Frisco under the Rock Island régime was one executed under date of March 30, 1907, between the Frisco and the Crawford County Mining Company, for a period of 99 years. The Crawford County Mining Company had outstanding an issue of its 5 per cent sinking fund gold bonds. The terms of the indenture provided for a gradual retirement of the bonds through the sinking fund process.

The coal company leased mineral rights on its property to various coal operators and from the royalties received contributed to the sinking fund for the retirement of its bonds. Any remaining income was to be devoted to the payment of interest, etc.

Such additional sums as were necessary to meet interest payments were to be charged against the Frisco as rental for the use of tracks of the mining company at Pittsburg, Kans.

The sums thus chargeable to the Frisco have averaged \$27,000 per year, and its privileges under the contract appear to consist of the right to place cars at the mines and take them therefrom. It is understood that the entire capital stock of the mining company is owned by the Chicago, Rock Island & Pacific Railway.

EFFECT OF FRISCO FINANCIAL POLICY.

The policy of the Frisco in the acquisition of new lines at prices greatly in excess of construction costs and the sale of its funded debt securities at extravagant rates of discount, including the payment of premiums on retired issues and commissions to banks and bankers on such issues, the investment in stocks of industrial companies on which no dividends have been paid, the assumption of heavy fixed charges for its Texas lines as well as for the Chicago & Eastern Illinois Railroad far greater than its returns therefrom, and payment of excessive charges upon the investment in and use of terminal and coal properties have resulted in the net revenue of the Frisco being absorbed by such charges in a sum which approximates between \$3,500,000 and \$4,000,000 per annum.

The following items are descriptive of those resulting in annual charges against the income of the Frisco and for which the Frisco received no apparent value or return. The charges are computed on the basis of actual amounts where ascertainable and by applying interest rates of 4 and 5 per cent on other items:

	Fixed annual charge.	
	4 per cent.	5 per cent.
Profits on sale of new lines to the Frisco, \$8,444,796.51.....	\$337,792	\$422,240
Discounts, premiums and commissions, net, \$30,500,000.....	1,220,000	1,525,000
Investment in Kirby Lumber Co. stock, \$1,226,208.....	49,048	61,310
Due from St. Louis, San Francisco & Texas Ry. for traffic balances, \$2,200,000....	88,000	110,000
Interest on \$28,500,000 bonds New Orleans, Texas & Mexico R. R., less \$500,000 in Frisco treasury and \$3,000,000 covering profit on sale of Brownsville.....	1,250,000	1,250,000
Interest on \$14,000,000 bonds New Orleans Terminal Co., Frisco proportion, net....	180,000	180,000
Average annual loss on investment in Chicago & Eastern Illinois R. R.....	170,000	170,000
Rentals paid Crawford Mining Co.....	27,000	27,000
	3,321,840	3,745,550

It will be observed that in applying the actual charges where ascertainable and 4 per cent on discounts, etc., the result is an annual charge of \$3,321,840, while applying the same rule on a 5 per cent basis \$3,745,550 is shown as the amount chargeable annually.

These figures of themselves are not strikingly significant, but when it is seen that they represent 31.09 per cent and 35.06 per cent, respectively, of the total funded debt interest charge of the Frisco each year and that the Frisco receives no apparent benefit therefrom their significance is apparent.

In order to earn the revenue necessary to meet these charges annually, and assuming that the operation of the Frisco was conducted on an operating ratio of 70 per cent, it would require gross revenues amounting to \$11,072,800 in the first instance and \$12,485,170 in the second. The total gross earnings of the Frisco for the fiscal year ended June 30, 1913, approximated \$43,000,000 and the amounts quoted represent 25.69 per cent and 29.04 per cent, respectively, of this sum.

ACQUISITION OF THE STOCK OF AND STATISTICS OF THE CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY AND STATISTICS OF THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

August 7, 1902, the Frisco issued a circular to the stockholders of the Chicago & Eastern Illinois Railroad Company offering to acquire the shares, both preferred and common, of that company, which, on or about the 15th of September, 1902, should be deposited with the Colonial Trust Company of New York.

In exchange for the preferred stock the Frisco was to deliver its 6 per cent preferred-stock trust certificates, payable July 1, 1942, at the rate of \$150 for each share of such preferred stock, and entitling the registered holder to quarterly dividends of \$1.50 per share, beginning January 1, 1903. Preferred stock was not to be transferred upon the books of the Chicago & Eastern Illinois until after October 1, 1902, so that any dividend for which the books might be

closed prior to that time would be payable to the registered holder of the deposited stock.

In exchange for the common stock the Frisco was to deliver its 10 per cent common-stock trust certificates, payable July 1, 1942, at the rate of \$250 for each share of common stock, and entitling the registered holder to semiannual dividends of \$5 per share, beginning January 1, 1903.

The stock trust certificates of the Frisco were to be issued under a trust agreement with the Colonial Trust Company and were secured by pledge of the deposited stock. The offer of the Frisco was recommended to the stockholders of the Chicago & Eastern Illinois, under date of August 7, 1902, in a letter signed by H. H. Porter, Flower & Company, George H. Ball, and Henry Seibert.

Under the terms of the trust agreement, in case of the failure of the Frisco to pay any of such dividends, and such default continued for a period of 30 days, the registered holder of the certificate was entitled to surrender it to the trust company, and, in exchange, upon demand, to receive the amount of the Chicago & Eastern Illinois stock represented by the deposited certificate. The trust agreement also provided that in case of any dividend being in default for 30 days, or if a default should occur in connection with the principal, appointment of a receiver for the Chicago & Eastern Illinois would be sought.

The authorized and outstanding issues of each class of Chicago & Eastern Illinois Railroad stock on July 1, 1902, and on May 27, 1913, were as follows:

Stock.	Amount authorized.	Outstanding.	In C. & E. I. treasury.	In hands of public.
July 1, 1902:				
Preferred.....	\$10,000,000	\$7,965,700	\$1,135,000	\$6,830,700
Common.....	15,000,000	12,448,400	5,230,600	7,217,800
May 27, 1913:				
Preferred.....	15,000,000	12,191,700	1,578,600	10,613,100
Common.....	15,000,000	13,626,100	6,408,300	7,217,800

The following tables show the dates of the issues of preferred and common stock and the purposes for which issued:

Chicago & Eastern Illinois Railroad Company preferred-stock issues, Nov. 12, 1887, to May 27, 1913.

Date.	Shares.	Issued for—Description.	Amount
1887, Nov. —.....	30,000	Issued in accordance with articles of consolidation, Nov. 12, 1887, in exchange for 30,000 shares Chicago & Eastern Illinois R. R. Co.; \$3,000,000 old capital stock retired by an issue of \$3,000,000 preferred and \$3,000,000 common.	\$3,000,000
1889, Mar. 1.....	14,652	Exchanged for 14,652 shares of Chicago & Indiana Coal Ry. Co. preferred stock.	1,465,200
1890, Nov. 3.....	1,133	To reimburse treasury for construction, Momence to Indiana State line, 11.33 miles.	113,300
Do.....	2,622	Exchanged for 2,647 shares of preferred stock of Chicago & Eastern Illinois Ry.	262,200

Chicago & Eastern Illinois Railroad Company preferred stock issues, Nov. 12, 1887, to May 27, 1913—Continued.

Date.	Shares.	Issued account of—Description.	Amount.
1890, Dec. 21.....	4,071	To reimburse treasury for construction, Tuscola to Shelbyville, 40.71 miles.	\$407,100
1896, June 14.....	12,218	To reimburse treasury for construction, Shelbyville to Marion, 122.18 miles.	1,221,800
1900, Feb. 16.....	4,858	To acquire Evansville, Terre Haute & Chicago Ry., 46.58 miles.	485,800
Do.....	1,262	To acquire Indiana Block Coal R. R., 12.62 miles.	126,200
Do.....	6,250	To reimburse treasury for construction, Marion to Thebes, 62.50 miles.	625,000
1902, Feb. 11.....	1,607	To reimburse treasury for construction, Joppa branch, 16.07 miles.	160,700
Do.....	1,084	Milford branch, 10.84 miles.	108,400
1904, Dec. 14.....	10,263	To reimburse treasury for construction, Rossville & Eastern branch, 13.77 miles; Hunts Switch, 6.94 miles; Woodland-Villa Grove and Findley-Pana, 81.92 miles.	1,026,300
1911, Sept. 6.....	1,000	Exchanged for stock of Evansville Belt Ry. Co.	100,000
1911, Sept. 1.....	29,150	Exchanged for Evansville & Terre Haute R. R. Co. common stock, at \$83.33.	2,915,000
1911, Oct. —.....	348	do.....	34,800
1911, Nov. —.....	222	do.....	22,200
1911, Dec. —.....	225	do.....	22,500
1912, Jan. —.....	600	do.....	60,000
1912, Jan. 10 to Sept. 7..	83	do.....	8,300
1912, Sept. 7 to Oct. 4..	7	do.....	700
1912, Oct. 6, to 1913, Mar. 6.	84	do.....	8,400
1913, Mar. 7 to May 5..	222	do.....	22,200
1913, May 5 to May 15...	56	do.....	5,600
	121,917	Total issues to May 27, 1913.....	12,191,700

Chicago & Eastern Illinois Railroad Company common-stock issues, Nov. 12, 1887, to May 27, 1913.

Date.	Shares.	Issued account of—Description.	Amount.
1887, Nov. —.....	30,000	Issued in accordance with articles of consolidation, Nov. 12, 1887: \$3,000,000 old capital stock retired by an issue of \$3,000,000 of preferred and \$3,000,000 of common.	\$3,000,000
1887, Nov. —.....	5,000	Exchanged for 5,000 shares Strawn & Indiana State Line R. R. Co.	500,000
1887, Nov. —.....	15,000	Exchanged for 15,000 shares of Chicago, Danville & St. Louis R. R. Co.	1,500,000
1890, Mar. 1.....	21,987	Exchanged for 21,978 shares common stock of Chicago & Indiana Ry. Co.	2,197,800
1890, Nov. 3.....	1,699	To reimburse treasury for construction, Mokenca to Indiana State line, 11.33 miles.	169,900
Do.....	3,783	Exchanged for 3,970 shares of Chicago & Indiana Coal Ry. Co. common stock.	378,300
1892, Dec. 21.....	6,106	To reimburse treasury for construction, Shelbyville to Marion, 20.71 miles.	610,600
1898, June 14.....	18,327	To reimburse treasury for construction, Shelbyville to Marion, 122.13 miles.	1,832,700
1900, Feb. 16.....	18,555	To acquire Evansville, Terre Haute & Chicago Ry. Co., 48.58 miles; to acquire Indiana Block Coal Ry. Co., 12.62 miles; to reimburse treasury for construction, Marion to Thebes, Ill.	1,855,500
1902, Feb. 11.....	4,036	To reimburse treasury for construction, Joppa branch, 16.07 miles; Milford branch, 10.84 miles.	403,600
1904, Dec. 14.....	11,777	To reimburse treasury for construction, Rossville & Eastern, 13.77 miles; Hunt's Switch, 6.94 miles; Woodland-Villa Grove and Findley-Pana, 81.92 miles.	1,177,700
	136,261	Total issues to May 27, 1913.....	13,626,100

The holders of Chicago & Eastern Illinois Railroad common stock, of record as of July 1, 1902, numbered 269, holding from 1 share to 52,306 shares each. The 52,306 shares were in the treasury of the company. The following is a list of holders of 1,000 shares or more at that date:

Name of holder.	Residence.	Shares
C. W. Benson & Co.	New York, N. Y.	1,400
Geo. S. Baldwin & Co.	Boston, Mass.	1,500
W. E. Barrett.	do.	3,800
Isabella F. Blackstone.	Chicago, Ill.	1,000
J. F. A. Clark.	New York, N. Y.	1,500
Dominick & Dominick.	do.	3,500
Wm. Dickinson.	Chicago, Ill.	1,000
Flower & Co.	New York, N. Y.	3,392
Marshall Field.	Chicago, Ill.	4,000
G. E. Kimmel.	New York, N. Y.	5,400
Jno. H. Ketcham.	Dover Plains, N. Y.	1,000
W. H. Mairs.	Brooklyn, N. Y.	2,000
Levi P. Morton.	New York, N. Y.	1,000
H. H. Porter.	Chicago, Ill.	8,611
Horace H. Stevens.	Boston, Mass.	1,200
Sunderd Bros.	New York, N. Y.	1,220
J. H. Wrenn & Co.	Chicago, Ill.	1,400

The total of Chicago & Eastern Illinois common shares outstanding in the hands of the public on June 30, 1903, was 72,178 shares, of which 70,642 shares had been deposited in exchange for \$17,660,500 Frisco common-stock trust certificates. There were also outstanding at that time 68,307 shares of Chicago & Eastern Illinois preferred stock, of which 41,717 shares had been deposited in exchange for \$6,257,500 of Frisco preferred-stock trust certificates.

The stock outstanding on May 27, 1913, amounted to \$13,626,100 common, and \$12,191,700 preferred. At that time 72,178 shares of common stock and 84,025 shares of preferred stock had been exchanged for Frisco stock-trust certificates.

The liability of the Frisco on May 27, 1913, represented by Chicago & Eastern Illinois stock-trust certificates was \$18,044,500 on the common stock, and \$12,603,750 on the preferred stock, a total of \$30,648,250. Of this amount the Frisco had acquired and placed in the treasury, \$2,520,000 of the common-stock trust certificates at a cost of \$1,884,320, leaving outstanding in the hands of the public \$15,524,500 of the common certificates and \$12,603,750 of the preferred certificates. The certificates that had been acquired by the Frisco, amounting to \$2,520,000 par, were pledged to the extent of \$2,500,000 with the Old Colony Trust Company as security for an issue of two-year 5 per cent notes amounting to \$2,250,000, due June 1, 1913, on which the Frisco defaulted.

Under date of November 15, 1905, application was made to the officials of the New York Stock Exchange to list \$10,113,000 in common-stock trust certificates in denominations of \$1,000 each, representing 4 shares of Chicago & Eastern Illinois Railroad common stock, in exchange for the 10 per cent certificates of the old form then outstanding, and additional certificates up to the total sum of \$18,044,500, representing the value, at \$250 each, of 72,178 shares of common stock of the Chicago & Eastern Illinois Railroad.

The purpose of securing the listing of this revised issue is understood to have been to effect a more ready disposition in the market

of Frisco certificates with a face value expressed in dollars thereon than was possible with the formerly issued certificates which merely referred to the number of Chicago & Eastern Illinois shares deposited thereunder.

The Frisco trust certificates are in the hands of 1,034 holders, 996 of whom reside in the United States, three in France, and 35 in Great Britain. The principal holders of these securities in the United States are as follows:

Name of holder.	Residence.	Holding.	Amount.
Marshall Field.....	Chicago, Ill.....	Preferred.....	\$450,000
Do.....	do.....	Common.....	1,100,000
Katharine P. Isham.....	do.....	do.....	912,000
Eliza T. Porter.....	do.....	do.....	300,000
H. H. Porter, Jr.....	do.....	do.....	829,000
Do.....	do.....	Preferred.....	67,500
Florence G. Ball.....	Boston, Mass.....	do.....	90,000
Do.....	do.....	Common.....	200,000
Isabella F. Blackstone.....	Chicago, Ill.....	do.....	250,000
Do.....	do.....	Preferred.....	300,000
Robt. S. Brewster.....	New York, N. Y.....	do.....	240,000
Do.....	do.....	Common.....	254,000
Walter F. Cobb.....	Chicago, Ill.....	do.....	350,000
Chas. W. Harkness.....	New York, N. Y.....	Preferred.....	393,750
Emily S. V. Sloane.....	do.....	do.....	300,000

The par value of the securities held in the United States and in foreign countries is:

Held in—	Number of holders.	Common.	Preferred.
United States.....	996	\$17,121,250	\$11,888,400
France.....	3		108,000
Great Britain.....	35	923,250	607,350
Total.....	1,034	18,044,500	12,603,750

The Frisco's investment in the stock of the Chicago & Eastern Illinois Railroad does not appear to have been profitable. In order to meet the interest charges on the stock trust certificates issued, it was necessary to receive regularly dividends of 6 per cent on the preferred stock and of 10 per cent on the common stock of the Chicago & Eastern Illinois. It did receive regularly dividends of 6 per cent on the preferred stock, but in only three years; namely, 1906, 1907, and 1908, were sufficient dividends received on the common stock to meet the interest charge upon the stock trust certificates issued in exchange therefor. The following table shows the dividends received on the common stock. This indicates a total loss of \$2,057,073 to May 27, 1913. From this amount the interest on certificates owned by the Frisco, amounting to \$346,685, should be deducted, leaving a net loss of \$1,710,388.

Dividends paid by Chicago & Eastern Illinois Railroad Co. on common stock, and net loss to Frisco.

Year.	Rate.	Amount of dividends.	Frisco loss.
	<i>Per cent.</i>		
1903.....	6	\$433,068	\$288,713
1904.....	8	577,424	144,356
1905.....	5	360,890	360,890
1906.....	8	577,424	216,534
1906.....	2 5	360,890	-----
1907.....	10	721,780	-----
1908.....	10	721,780	-----
1909.....	2	144,356	577,424
1910.....	8	577,424	144,356
1911.....	9 5	685,691	36,099
1912.....	5	360,890	360,890
1913.....			360,890
Total.....		5,521,617	2,057,073

¹ Excess dividend over interest payment.

Extra.

² Declared from surplus.

The annual interest charge on the Frisco common-stock trust certificates amounted to \$721,780. The last dividend paid on the Chicago & Eastern Illinois common stock was 5 per cent, December, 1911. Interest on the common-stock trust certificates was paid by the Frisco to December 31, 1912. The payment due June 30, 1913, was defaulted, as was also the quarterly dividend on the preferred-stock trust certificates for the quarter ended June 30, 1913. The last dividend paid on the preferred stock of the Chicago & Eastern Illinois was for the quarter ended March 31, 1913.

During the several years prior to the acquisition of this stock by the Frisco, the Chicago & Eastern Illinois paid dividends of 6 per cent on its preferred stock in 1899, 1900, and 1901. During the same period the dividends paid on the common stock were 3½ per cent in 1899, 4½ per cent in 1900, and 5½ per cent in 1901. The surplus carried to profit and loss after paying dividends during these years was \$100,598.69 in 1899, \$232,423.71 in 1900, and \$317,245.45 in 1901.

After the payment of dividends the income account of the Chicago & Eastern Illinois showed deficits for the years 1905 and 1908 of \$80,265.67 and \$115,394.24, respectively. Subsequently to 1908 the sums available for dividend payments were not sufficient to warrant dividends in excess of those that were declared, as is evidenced by the following table:

Balances in Chicago & Eastern Illinois income account after dividend charges.

Year.	Surplus.	Deficit.	Year.	Surplus.	Deficit.
1902.....	\$907,171.77	-----	1908.....	-----	\$115,394.24
1903.....	1,261,800.73	-----	1909.....	\$20,972.94	-----
1904.....	757,952.23	-----	1910.....	68,524.16	-----
1905.....	-----	\$80,265.67	1911.....	28,807.12	-----
1906.....	37,662.27	-----	1912.....	104,946.42	-----
1907.....	418,545.77	-----	1913, to May 27.....	-----	976,582.68

It will be noted that the decrease in surplus since the fiscal year 1904 has occurred under the Frisco management of this property. The causes for this decrease appear in the tables at the end of this chapter.

The financial transactions between the Frisco and the Chicago & Eastern Illinois were not numerous. The Chicago & Eastern Illinois loaned to the Frisco, during the period 1903 to 1907, \$800,000, evidenced by four notes. The Evansville & Terre Haute Railroad loaned the Frisco in 1907 and 1908 \$721,492 on four notes. The Frisco loaned the Chicago & Eastern Illinois, from January, 1912, to April 29, 1913, \$430,000 on four notes. All of these notes were paid, except one issued by the Chicago & Eastern Illinois to the Frisco, dated April 29, 1913, for \$100,000.

The value of the traffic delivered to the Frisco by the Chicago & Eastern Illinois, in excess of that interchanged with other Chicago connections, can not be determined. There was no physical connection between the properties at the time the Frisco acquired control. In order to effect a connection between the two roads, it was necessary for the Chicago & Eastern Illinois to enter into a contract with the Cairo, Vincennes & Chicago Railway (Big Four) for trackage rights from Pana to East St. Louis, Ill., approximately 75 miles. The contract for this was executed November 1, 1902, for a period of 999 years. Under the contract the Big Four was to double-track the line in question, and the cost of maintenance and operation of, and the taxes on, the joint line were to be divided on a per-car basis. In addition, a rental of 2 per cent per annum upon the appraised value of the property used was to be paid by the tenant company. These annual rental charges of the Chicago & Eastern Illinois for the last eight years were:

Year.	Amount.	Year.	Amount.
1906.....	\$110,868.37	1910.....	\$117,322.78
1907.....	119,930.72	1911.....	122,373.22
1908.....	109,801.00	1912.....	93,881.02
1909.....	122,337.35	1913, to May 27.....	102,490.28

The gross operating revenue of the Chicago & Eastern Illinois Railroad increased from about \$6,000,000 in 1901 to about \$15,000,000 in 1912. The operating expenses increased from about \$3,000,000 in 1901 to about \$11,000,000 in 1912. The operating ratio increased from 54.75 per cent in 1901 to 80.19 per cent for 11 months of 1913, distributed as follows:

	1901		1913	
	Amount.	Per cent.	Amount.	Per cent.
Maintenance of way.....	\$659,988.58	21.58	\$1,926,535.44	16.33
Maintenance of equipment.....	610,993.98	19.97	3,442,121.09	29.18
Traffic.....	57,708.89	1.89	294,839.89	2.50
Transportation.....	1,585,618.47	51.83	5,683,907.23	48.19
General.....	144,664.60	4.73	447,622.16	3.80
Total.....	3,058,970.53	100.00	11,795,025.81	100.00

Notwithstanding an increase in the gross revenue for 11 months of 1913 over 1901 of \$9,121,425.48, only \$385,370.19 remained as the increased net result of operation. This can not be said to result from a high standard of maintenance of the property, as the ratio of 21.58 per cent applied to maintenance of way in 1901 decreased to 16.33 per cent in 1913. The proportion of funded debt interest to net earnings increased from 48.42 per cent to 101.40 per cent in the same period. In other words, the net earnings for the 11 months for the year 1913 fell short of meeting the interest requirements by \$40,916.08. Equipment maintenance increased proportionately, but no proper provision was made for equipment depreciation, as the rate used was one-fourth of 1 per cent. This basis of depreciation charges assumes that the equipment will not become obsolete for 400 years.

The only inference to be drawn is that maintenance of the property was subordinated to the payment of dividends, which inference is substantiated in part by the following copy of a letter:

[Personal.]

CHICAGO, April 3, 1913.

Mr. S. T. PARK,

Superintendent Motive Power, Danville, Ill.

DEAR SIR: Since talking with you to-day I have had a conversation with Mr. Yoakum, and he has intimated very strongly that he expects us to earn our dividends. To do this it is necessary for us to make material reductions in our expenses in your department, and even then I am doubtful if we can meet his wishes.

Yours, truly,

Vice President and General Manager.

Chicago & Eastern Illinois Railroad Company.—Averages and ratios based on revenues, interest on funded debt, and funded debt.

Fiscal years ended June 30—	Gross operating revenue.	Operating expenses.	Operating ratio.	Net revenue rail operations.	Total mileage operated on June 30.	Revenue per mile of line operated.		Total funded debt (including equipment trust) outstanding on June 30.	Net interest deductions on funded debt.	Total mileage owned on June 30.	Average amount of funded debt per mile of line owned.	Average annual interest on funded debt per mile of line owned.	Ratio of net earnings to total funded debt.	Ratio of interest on funded debt to net earnings.
						Gross.	Net.							
1901.....	35,857,641.03	33,058,970.82	P. d.	\$2,828,571.41	777	\$7,685.75	\$3,478.09	\$23,975,447.85	\$1,224,285.43	704	\$33,900.35	\$1,739.04	P. d.	P. d.
1902.....	6,152,827.44	3,800,890.29	53.30	2,891,707.15	738	8,380.96	3,918.30	23,906,292.45	1,245,888.08	715	33,439.57	1,742.50	10.63	48.42
1903.....	7,696,329.92	4,045,050.37	53.32	3,641,279.55	751	10,101.64	4,716.42	23,940,694.24	1,612,999.47	728	35,632.68	2,215.66	13.05	45.55
1904.....	8,489,359.01	5,050,021.29	59.25	3,459,337.73	758	11,199.69	4,963.77	23,983,536.48	1,356,778.10	735	40,263.31	1,845.96	11.69	39.22
1905.....	8,422,485.75	5,575,150.09	66.19	2,847,335.66	948	8,894.48	3,003.51	33,733,478.72	1,506,467.57	817	43,737.42	1,843.90	7.97	52.91
1906.....	9,528,473.66	6,404,936.41	64.51	3,523,537.25	947	10,473.07	3,924.41	43,015,420.96	1,829,461.71	817	52,650.45	2,239.24	8.19	51.92
1907.....	11,393,397.08	7,637,731.00	67.04	3,755,666.06	967	11,905.33	3,540.17	45,894,363.20	2,043,665.15	817	56,247.69	2,501.45	9.17	54.42
1908.....	10,742,731.40	7,354,792.43	68.46	3,387,938.97	966	11,225.42	3,462.17	47,409,053.44	2,087,471.00	817	58,023.16	2,553.04	7.15	51.61
1909.....	10,298,618.99	6,864,583.51	67.52	3,356,065.48	966	10,631.07	3,459.48	48,540,469.92	2,197,968.28	819	59,622.16	2,688.75	7.83	57.90
1910.....	11,796,345.29	7,343,963.24	67.69	4,452,382.05	966	12,103.83	3,929.95	48,540,469.92	2,197,968.28	819	59,622.16	2,688.75	7.83	57.90
1911.....	12,431,113.74	8,394,751.70	67.44	4,036,362.04	1,275	12,103.83	3,929.95	48,540,469.92	2,197,968.28	1,123	59,622.16	2,688.75	7.83	57.90
1912.....	12,431,113.74	8,394,751.70	67.44	4,036,362.04	1,275	12,103.83	3,929.95	48,540,469.92	2,197,968.28	1,123	59,622.16	2,688.75	7.83	57.90
1913, to May 27.....	14,708,867.41	11,796,028.51	80.19	2,912,841.60	1,275	11,536.45	2,288.44	70,072,300.00	2,864,857.68	1,123	62,397.33	2,631.22	4.16	101.40

¹ Includes interest to maturity on car trust notes for deferred payments on 1,000 box and 750 coal cars purchased from the American Car & Foundry Co. during the year.

St. Louis & San Francisco Railroad.—Averages and ratios based on revenues, interest on funded debt, and funded debt.

Fiscal year ended June 30—	Gross operating revenue.	Net revenue rail operations.	Total mileage operated on June 30.	Revenue per mile of line operated.		Total funded debt (including equipment-trusts) outstanding on June 30.	Net interest deductions on funded debt.	Total mileage owned on June 30.	Average amount funded debt per mile of line owned.	Average annual interest on funded debt per mile of line owned.	Ratio of net earnings to total funded debt.	Ratio of interest on funded debt to net earnings.
				Gross.	Net.							
1897.....	\$5,993,336.17	\$2,509,707.80	1,162	\$5,157.78	\$2,159.82	\$37,283,850.00	\$1,994,493.00	1,145	\$32,668.68	\$1,741.91	6.73	79.47
1898.....	6,866,467.77	2,863,393.98	1,252	5,571.61	2,228.05	39,116,100.00	2,028,743.78	1,265	30,923.40	1,608.78	7.30	71.03
1899.....	7,828,662.13	2,836,711.88	1,365	5,737.91	2,093.97	41,897,043.78	2,109,249.13	1,368	30,407.63	1,641.86	6.94	72.10
1900.....	7,828,662.13	2,836,711.88	1,402	5,584.15	2,093.97	46,776,931.25	2,145,924.50	1,385	32,491.03	1,649.40	7.33	66.21
1901.....	10,173,977.44	7,188,638.94	1,408	6,998.19	2,537.18	46,776,931.25	2,145,924.50	1,385	32,491.03	1,649.40	8.77	51.92
1902.....	18,668,376.44	7,188,638.94	2,394	6,558.67	2,483.29	72,109,743.02	2,824,919.33	1,987	36,293.68	1,824.70	8.77	51.92
1903.....	20,892,772.47	7,385,870.43	2,784	6,226.26	2,718.00	113,104,143.62	4,120,819.53	2,809	47,374.00	1,958.66	8.77	51.92
1904.....	23,081,617.67	8,014,010.25	3,735	6,173.78	2,145.65	132,007,182.62	4,381,636.28	3,812	46,302.04	1,715.43	8.07	61.93
1905.....	28,498,477.07	10,293,857.65	4,737	6,013.61	2,174.34	152,795,524.44	6,281,340.89	5,572	44,100.84	1,775.75	8.07	61.93
1906.....	30,453,677.12	11,292,054.88	4,737	6,452.79	2,372.81	162,472,777.97	6,675,470.86	5,572	46,408.56	1,983.15	7.72	69.59
1907.....	33,619,712.70	13,441,028.11	4,737	7,131.95	2,843.46	174,054,737.07	6,975,470.86	5,572	46,408.56	1,983.15	7.72	69.59
1908.....	35,619,712.70	10,496,636.99	4,737	7,535.37	2,640.38	194,674,800.70	7,880,784.17	5,572	54,207.11	2,108.33	6.41	70.78
1909.....	39,089,647.07	12,481,068.90	4,737	8,271.19	2,688.70	235,274,860.90	8,622,404.47	5,572	55,257.94	2,235.95	5.40	63.14
1910.....	40,757,480.51	13,580,584.65	4,732	8,619.40	2,871.85	240,058,971.27	9,522,404.47	5,572	68,782.47	2,419.08	5.20	60.66
1911.....	39,550,475.51	12,980,420.53	4,742	8,344.47	2,730.23	238,129,328.70	10,225,024.23	5,572	67,595.61	2,774.44	5.45	73.72
1912.....	39,550,475.51	12,980,420.53	4,742	8,344.47	2,730.23	244,299,853.73	9,775,685.39	5,572	69,335.75	2,774.44	5.45	73.72
1913, to May 27.....	39,550,475.51	12,980,420.53	4,742	8,344.47	2,730.23	244,299,853.73	9,775,685.39	5,572	69,335.75	2,774.44	5.45	73.72

Excludes mileage of Paris & Great Northern Railroad.

**PROGRESS OF ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
RECEIVERSHIP.**

The receivers originally appointed for the Frisco were B. L. Winchell, president of the Frisco, and Thomas H. West, chairman of the board of the St. Louis Union Trust Company. Mr. Winchell later resigned and W. C. Nixon and W. B. Biddle, vice presidents of the Frisco, in charge, respectively, of operation and traffic, were appointed receivers on July 15, 1913, vice Mr. Winchell. In December, 1913, Mr. West was succeeded as receiver by James W. Lusk, and the property is now in the hands of Messrs. Lusk, Nixon, and Biddle as receivers.

The results of operation of the property during the period of the receivership to November 30, 1913, compared favorably with that of the same period of the previous year. The increased earnings under the receivership amounted to \$412,773.26, resulting in the largest earnings in the history of the property for any like period.

The available cash on hand on November 30, 1913, was \$1,470,249.21, the receipts and disbursements during the receivership being as follows:

Receipts.

Received from treasurer St. Louis & San Francisco R. R. May 28, 1913..	\$603, 849. 96
Items accrued prior to appointment of receivers.....	3, 191, 618. 98
Items accrued since appointment of receivers.....	26, 001, 955. 25
Total receipts.....	29, 797, 424. 19

Disbursements.

Items accrued prior to appointment of receivers.....	6, 900, 157. 97
Items accrued since appointment of receivers.....	21, 427, 017. 01
Total disbursements.....	28, 327, 174. 98

From the above it will be observed that the receivers have paid from current receipts \$3,709,539.99 on account of indebtedness incurred by the company prior to their appointment. In addition they have paid \$1,354,904.38 of the principal of equipment trust obligations, being the entire amount of such obligations matured during the receivership to November 30, 1913. Interest coupons amounting to \$2,981,144.39 have been paid, as have also all rentals, taxes, and sinking-fund requirements, while an increase of \$141,000 has been effected in the stock of material and supplies.

The amount of outstanding bonds in the hands of the public have increased during the same period \$574,000, occasioned by the sale of an equal amount of general lien 5 per cent bonds which were disposed of by bankers holding such bonds as collateral for loans made prior to May 28, 1913. The liability of the company in the form of notes liquidated by the sale of this collateral was \$286,635.01.

Interest on funded debt has been paid at the interest dates with the exception of the following instances in which there has been default. The principal and interest on an issue of 2-year notes also in default, is included.

Principal and interest on \$2,250,000 2-year notes due June 30, 1913.

Interest on 2-year notes dated September 1, 1912, due September 1, 1914.

Interest on Frisco-Chicago & Eastern Illinois common-stock trust certificates, due July 1, 1913.

Interest on Frisco-Chicago & Eastern Illinois preferred-stock trust certificates, due July 1, 1913.

Interest on Frisco-New Orleans, Texas & Mexico Railroad division bonds, due September 1, 1913.

Interest on New Orleans Terminal Company's bonds, due July 1, 1913.

The payment of the principal of \$2,880,000, par value, Ozark & Cherokee Central Railway bonds, due October 1, 1913, has been extended by agreement with the bondholders to October 1, 1914.

In but one instance has it been necessary for the receivers to borrow funds to liquidate indebtedness of the Frisco which they were permitted to pay. They borrowed \$400,000 from the St. Louis Union Trust Company on three notes due July 1, which were all paid prior to July 25.

On petition of the receivers an order of the court was entered October 27, 1913, authorizing an issue of \$10,000,000 of receiver's certificates, the proceeds thereof to be used in the payment of preferential claims, equipment trust notes, bonds and bond interest, and for additions and betterments. None of these certificates had been issued up to November 30, 1913, but the dates, amount and interest thereon are to be fixed by further orders of the court.

An order of the court was entered December 26, 1913, denying the petition of William W. Niles for leave to sue the former officers and directors of the Frisco for alleged violation of their trust in the sale by them in 1909 of the stock, bonds, and notes of the St. Louis, Brownsville & Mexico Railway Company. The receivers were instructed to bring and prosecute such suit or suits, John D. Johnson and Loomis C. Johnson were appointed special counsel for the receivers, and James W. Lusk was invested with exclusive charge for the receivers of the conduct of such suit or suits.

Under instructions from the court the receivers have refrained from paying any bills for material purchased prior to May 28, or bills of other carrier companies for car repairs, claims, traffic balances, etc., which apply to the six months prior to the receivership.

The receivers are endeavoring to have these orders of the court modified so that they may pay such bills as they are audited.

Considerable improvement work is being done by the receivers, more particularly rebuilding bridges, laying heavier rails, and continuing work that was in progress prior to the receivership. A slight curtailment in the expenses of operation has been effected by discontinuing the salaries of the chairman of the board and the president, reducing the New York office force, and slightly reducing the salaries of several of the vice presidents. Transportation costs have been reduced by discontinuing a number of passenger trains. A higher standard of maintenance appears to have been applied during the term of the receivership. Application is to be made to the court for the abrogation of a contract with the Peabody Coal Company for delivery of approximately 700 tons of fuel per day. The tie-treating contract with the American Creosoting Company has been suspended for two years by mutual consent of the parties thereto.

PROGRESS OF CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY RECEIVERSHIP.

May 27, 1913, on petition of the Railway Steel-Spring Company, William J. Jackson and Edwin W. Winter were appointed receivers of the Chicago & Eastern Illinois Railroad. The amount due the petitioner, as stated in the bill, was \$57,673.42. The receivers qualified and took possession of the property on the day of their appointment, and are now operating the same.

Will H. Lyford, of Chicago, Ill., was appointed general counsel for the receivers.

The results from operation of the property for the months of June and July, 1913, compare favorably with those of the corresponding months of 1912.

	June, 1912.	June, 1913.	July, 1912.	July, 1913.
Operating revenues.....	\$1,206,518.25	\$1,345,482.04	\$1,301,928.28	\$1,367,571.97
Operating expenses.....	762,440.93	965,775.91	900,008.91	1,084,396.95
Taxes.....	28,500.00	43,466.67	87,000.00	45,000.00
Net.....	415,577.32	336,239.46	364,919.37	238,175.02

It will be noted that the gain in gross revenues is more than offset by the increases in operating expenses, due largely to maintenance expenditures necessitated by lack of proper maintenance in previous years. The receivers being under no obligations to pay dividends, it is probable that maintenance charges will continue to be large until the property is brought to a higher physical standard.

On June 3, 1913, the court authorized the receivers to pay fines and costs aggregating \$10,034.82, assessed against the Chicago & Eastern Illinois Railroad Company for violations of the act to regulate commerce.

On June 25, 1913, an order was entered giving leave to the Equitable Trust Company of New York to file an intervening petition. The Equitable Trust Company of New York is the trustee under two trust agreements dated October 1, 1902, and a supplemental agreement dated April 27, 1905, in respect to common-stock trust certificates representing Chicago & Eastern Illinois Railroad common stock, entered into between the St. Louis & San Francisco Railroad Company and the Colonial Trust Company of New York. These trust agreements provided for the issuance by the Frisco of certain stock trust certificates in respect to common and preferred capital stock of the Chicago & Eastern Illinois.

On June 25, 1913, an order was entered authorizing the receivers to make repairs, additions, and betterments and purchases of additional locomotives, and to pay the cost thereof out of any funds coming from the operation of the property.

The receivers were also authorized to pay the interest maturing on or before January 1, 1914, upon the defendant's refunding and improvement bonds, bills payable, and rentals.

The receivers were also authorized to issue \$4,000,000 of receivers' certificates for payment of the following:

Interest maturing on or before Jan. 1, 1914, upon railroad bonds other than refunding and improvement bonds.....	\$1, 474, 735. 00
Interest maturing on or before Jan. 1, on equipment obligations.....	170, 872. 50
Principal installments due on or before Jan. 1, 1914, on equipment obligations.....	850, 000. 00
Overdue vouchers and supply accounts (the unpaid vouchers on May 27, 1913, amounted to \$2,697,874.76).....	1, 504, 392. 50
Total.....	4, 000, 000. 00

The Bankers Trust Company as trustee under the refunding and improvement mortgage opposed the issuing of the receivers' certificates upon the terms proposed.

The receivers' certificates are dated July 1, 1913, payable one year after date, with interest at the rate of 6 per cent per annum payable semiannually. The entire issue was taken by the Equitable Trust Company at various dates during July, 1913, at par, less 1½ per cent commission. The amount realized by the receivers was \$3,940,000. From this fund disbursements were made to September 1, 1913, as follows:

Interest maturing on or before Jan. 1, 1914, upon railroad bonds other than refunding and improvement bonds.....	\$435, 050. 00
Interest maturing on or before Jan. 1, 1914, on equipment obligations..	138, 382. 50
Principal installments due on or before Jan. 1, 1914, on equipment obligations.....	658, 000. 00
Overdue vouchers and supply accounts.....	1, 504, 392. 50
Aggregate payments.....	2, 735, 825. 00

On June 30, 1913, the Equitable Trust Company loaned the receivers \$725,000 on a demand note dated June 28, 1913, bearing interest at 6 per cent. The proceeds were deposited in the Mechanics & Metals National Bank of New York on June 30, 1913. This was a temporary loan secured in order to meet interest obligations due on July 1, 1913, and the note was paid by the receivers on July 1, 1913, from the proceeds of receivers' certificates.

SECURITIES OF RAILWAY AND BRIDGE COMPANIES OWNED AND CONTROLLED BY THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

The following is a list of the securities of railroad and bridge companies owned by the Frisco, and of the securities of similar companies controlled by the Frisco through ownership of the capital stock of the Kansas City, Fort Scott & Memphis Railway and the New Orleans, Texas & Mexico Railroad.

The explanatory notes to the tables describe the methods employed in the acquisition of the securities. (See accompanying folder for first of tables.)

Securities controlled by St. Louis & San Francisco Railroad Company through ownership of New Orleans, Texas & Mexico Railroad Company stock.

Name of corporation.	Class of securities.	Total issues, par value.	Controlled by St. L. & S. F. R. R., par value.	Per cent of ownership.	Time acquired.	Book value.	Remarks.
St. Louis, Brownsville & Mexico Railway Co.	Stock.	\$500,000.00	\$400,100.00	99.5	May, 1910...	\$1,932,192.17	Note L.
Do.....	Bonds	12,147,105.08	12,147,105.08	100.0	May, 1910- June, 1913.	12,128,937.28	Note L.
Houston Belt & Terminal Ry. Co.	Stock.	26,000.00	12,500.00	50.0	Aug. 1908...	12,500.00	Note M.
Brownsville & Matamoros Bridge Co.	...do..	500,000.00	249,700.00	49.7	May, 1910...	249,700.00	Note N.
The Beaumont, Sour Lake & Western Ry. Co.	...do..	85,000.00	\$84,100.00	99.0	May, 1908- Oct., 1912.	390,475.42	Note L.
Do.....	Bonds	2,007,250.74	2,007,250.74	100.0	...do.....	2,007,250.74	Note L.
The Orange & North Western R. R. Co.	Stock.	35,000.00	\$31,500.00	90.0	May, 1906...	280,686.99	Note L.
Do.....	Bonds	1,066,946.51	1,066,946.51	100.0	Oct., 1910...	1,066,946.51	Note L.

¹ The difference between total issues and amount controlled represents shares for qualifying directors.

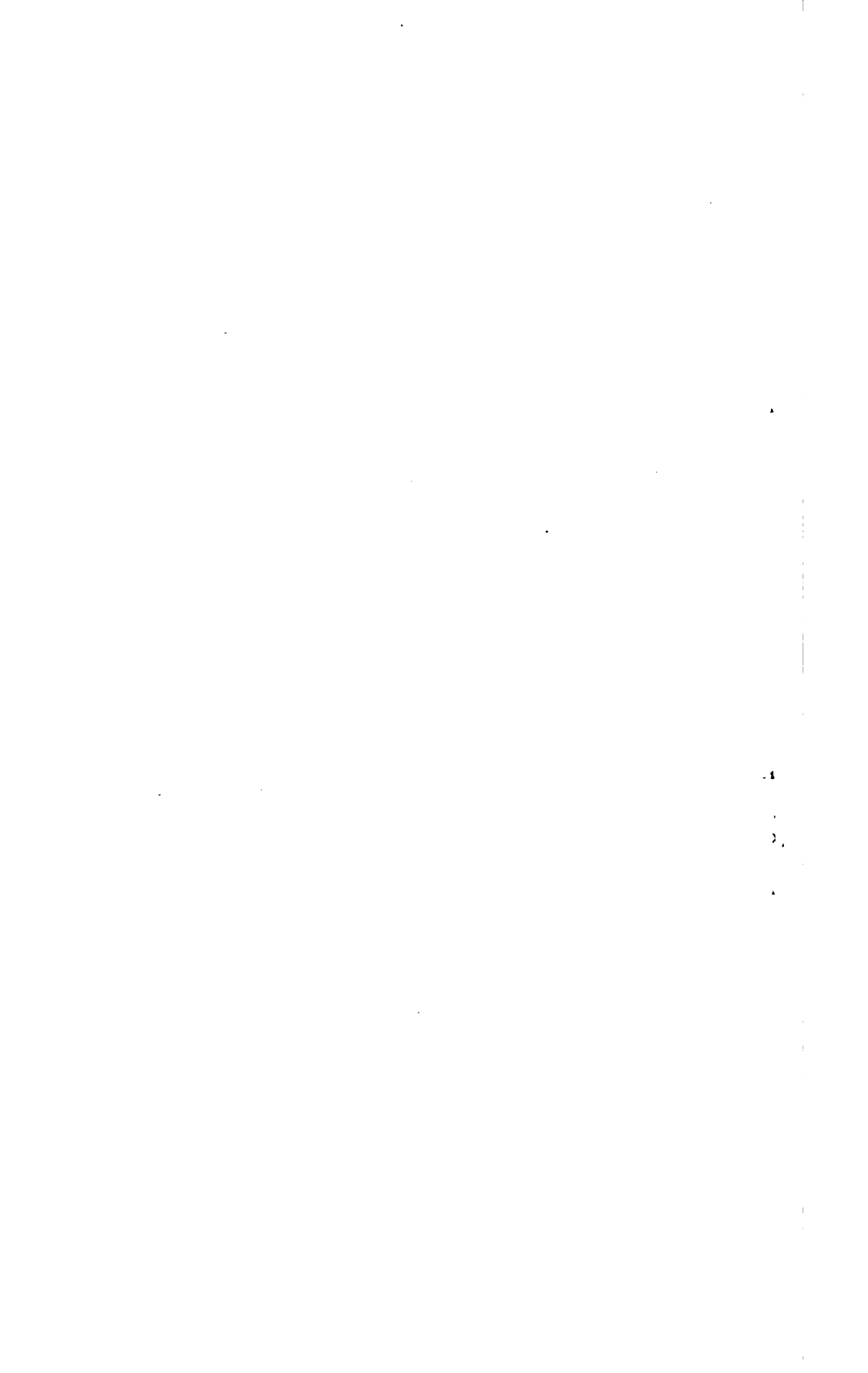
NOTE A.—Stock and bonds of the Brownwood North & South Railway were received in return for cash advances made to that company for account of construction. Cash principally was paid to F. B. Hollis for the stock of the Fort Worth & Rio Grande Railway. A portion of this stock and the bonds were received in reimbursement for cash advanced. The Frisco secured from the trustee of the refunding mortgage \$2,812,900 in reimbursement for the foregoing expenditures in accordance with the terms of the indenture.

NOTE B.—All of the capital stock of the Colorado Southern, New Orleans & Pacific Railway, except qualifying directors' shares, and \$1,000,000 par value of the first mortgage bonds were acquired from the Colorado Southern, New Orleans & Pacific Railroad for \$2,476,950 in cash. These funds were obtained through a sale of \$7,500,000 of Frisco collateral trust five-year 5 per cent notes sold to Blair & Company at various dates commencing with April, 1906, at 94.36. The remainder of the proceeds of this sale was advanced to the Colorado Southern, New Orleans & Pacific Railway for construction and other purposes. The name of this company was changed in March, 1910, to the New Orleans, Texas & Mexico Railroad Company.

Stocks and bonds of railroad stock of the Kansas City, Fort Scott & Memphis

Name of corporation	Direct exchange of securities.	Expenditures for additions and betterments.	Miscellaneous.	Remarks.
Birmingham Belt Ry. Co.....				
Metropolitan Rapid Transit, L.....				
Birmingham Terminal Co.....				
Kansas Southwestern Ry. Co.....				
Intermittent Vacuum Pre-Cool.....				
West Tulsa Belt Ry. Co.....				
Kansas City Terminal Ry. Co.....				
New Orleans, Mobile & Chicago				
Do.....				
Rio Grande Ry. Co.....				
Wichita Union Terminal Co.....				
Quannah, Acme & Pacific R. R.....				
Brownsville Street & Interurban				
Frisco Refrigerator Line.....				
Brownwood North & South Ry.....	0.00			Note A.
Do.....	5.78			Do.
Fort Worth & Rio Grande Ry.....	2.87			Note B.
Do.....				Note C.
New Orleans, Texas & Mexico.....	0.00			Note D.
St. Louis, San Francisco & Tex.....	\$4,650,000.00			Do.
Do.....	12,807,750.00			Note E.
Chicago & Eastern Illinois R. R.....	18,239,187.13			Do.
Do.....	13,510,000.00	\$3,150,000.00		Note F.
Kansas City, Fort Scott & Mem.....				Note G.
Do.....	339,500.00			Note H.
Kansas City, Memphis & Birm.....				Note I.
Do.....				Note J.
Paris & Great Northern R. R. Co.....			\$1.00	Note K.
Do.....				Do.
Memphis R. R. Terminal Co.....				
New Orleans R. R. Terminal Co.....				
Terminal R. R. Association of S.....			13,600.00	
Cape Girardeau Northern Ry. Co.....				
Rock Island Frisco Terminal Co.....				
New Iberia & Northern R. R. Co.....			1,544,299.09	
Iberia, St. Mary & Eastern R. R.....			898,789.74	





NOTE C.—The Frisco issued \$4,650,000 of Frisco-St. Louis, Oklahoma & Southern Railway first mortgage bonds, receiving in exchange an equal amount of the bonds of the St. Louis, Oklahoma & Southern Railway, \$5,500,000 of the stock of that company, and \$804,000 of the stock and \$200,000 of the bonds of the St. Louis, San Francisco & Texas Railway. The exchange of these securities was effected through the St. Louis Union Trust Company.

NOTE D.—The preferred and common stock of the Chicago & Eastern Illinois Railroad was acquired subsequently to September, 1902, by exchange of Frisco 6 per cent preferred-stock trust certificates and its 10 per cent common-stock trust certificates on the basis of \$150 for the preferred stock and \$250 for the common stock.

NOTE E.—The Frisco acquired \$13,510,000 par value of the preferred stock of the Kansas City, Fort Scott & Memphis Railway and \$15,000,000 of the common stock of that company in September, 1901, by an exchange with a syndicate committee of Frisco-Kansas City, Fort Scott & Memphis preferred-stock trust certificates in amount equaling the par value of the preferred stock thus acquired. An additional block of \$3,150,000 of the preferred stock was received by the Frisco in reimbursement for cash advanced by the Frisco for additions and betterments made to the property of the Kansas City, Fort Scott & Memphis Railway.

NOTE F.—The income bonds of the Kansas City, Memphis & Birmingham Railroad were acquired by the Frisco for account of the Kansas City, Fort Scott & Memphis Railway, that company issuing to the Frisco an equal amount of its refunding bonds in reimbursement. The stock of the Kansas City, Memphis & Birmingham was acquired in 1888 by the Kansas City, Fort Scott & Memphis Railroad and was sold to the Kansas City, Fort Scott & Memphis Railway Company, its successor, in the sale of the property and assets to that company in 1901.

NOTE G.—Stock and bonds of the Paris & Great Northern Railroad Company were acquired by the Frisco from the St. Louis & San Francisco Railway Company, through the reorganization committee at the time of the receivership in 1896.

NOTE H.—The stocks of the Memphis Railroad Terminal Company, the New Orleans Railroad Terminal Company, and Terminal Railroad Association of St. Louis were received by the Frisco as bonuses for cash advanced from time to time to those companies, which advances were subsequently liquidated by the debtor companies, the securities being carried at a nominal book value of \$1.

NOTE I.—The bonds of the Cape Girardeau Northern Railway Company, amounting to \$16,000, were received by the Frisco in March, 1913, in settlement of traffic balances and miscellaneous bills due from that company.

NOTE J.—The stock and bonds of the Rock Island-Frisco Terminal Company were received in reimbursement for cash advanced by the Frisco for the construction of the terminal property. The Rock Island lines are joint users of this property, and also contributed advances in a manner similar to that employed by the Frisco.

NOTE K.—The stocks of the New Iberia & Northern Railroad Company, and the Iberia, St. Mary & Eastern Railroad Company were acquired in May, 1913, under an agreement dated September 1, 1911, between A. T. Perkins, syndicate manager, and C. W. Hillard, trustee, the covenants and agreements made by the latter being guaranteed by the Frisco. The Frisco issued, under date of May 23, 1913, two notes aggregating \$2,443,088.33 for all of the capital stock and properties of these two companies, paying, in addition, \$50,000 in cash for the purpose of liquidating certain indebtedness of the companies named.

NOTE L.—The entire capital stock of the St. Louis, Brownsville & Mexico Railway, except qualifying directors' shares, and \$10,256,000 of the bonds of that company were purchased by the Frisco from the St. Louis Union Trust Company in May, 1910, for account of the New Orleans, Texas & Mexico Railroad Company, payment being made by the Frisco partly in cash, partly by a note, and the balance by deposit of bonds of the New Orleans, Texas & Mexico division. Stock of the Beaumont, Sour Lake & Western Railway, par value \$19,100 and stock of the Orange & Northwestern Railroad, par value \$31,500, were acquired by the Colorado Southern, New Orleans & Pacific Railway in May, 1906, in settlement with the Gulf Construction Company. The remaining stocks and bonds of these three companies were acquired by the New Orleans, Texas & Mexico Railroad through funds advanced by the Frisco from time to time in which notes were taken, which notes were in part liquidated by bonds. The Frisco was reimbursed by an issue of bonds known as the Frisco-New Orleans, Texas & Mexico division first mortgage bonds, which are a direct lien upon the property of the New Orleans, Texas & Mexico Railroad, and an indirect lien upon the other properties through pledge with the trustee of the mortgage of the securities of the three companies owned by the New Orleans, Texas & Mexico Railroad.

NOTE M.—Twenty-five per cent of the stock of the Houston Belt & Terminal Railway Company is owned by the St. Louis, Brownsville & Mexico Railway and an equal amount by the Beaumont, Sour Lake & Western Railroad, this stock having been acquired from the St. Louis Union Trust Company in August, 1905, and May, 1910.

NOTE N.—The St. Louis, Brownsville & Mexico Railway acquired in May, 1910, 49.70 per cent of the stock of the Brownsville & Matamoros Bridge Company. This was secured from the St. Louis Union Trust Company in exchange for an equal amount of the bonds of the St. Louis, Brownsville & Mexico Railway. The National Railways of Mexico also own stock of this Bridge Company.

REORGANIZATION OF THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY.

The St. Louis & San Francisco Railroad Company, successor to the St. Louis & San Francisco Railway Company, began operations July 1, 1896, under a plan of reorganization dated April 21, 1896. The old company passed through a receivership on account of default on the interest on St. Louis & San Francisco Railway consolidated mortgage 5 per cent 100-year bonds dated June 11, 1891. The property was sold to the purchasing committee under foreclosure proceedings, and a plan of reorganization was effected with the holders of the defaulted bonds, resulting in an assessment of 10 per cent on approximately \$8,000,000 par value of this issue of bonds outstanding in the hands of the public. Additional bonds representing more than \$5,000,000 were purchased by the reorganization committee from the Santa Fe committee. In return for a \$1,000 bond and the payment of the assessment, the depositor was entitled to \$140 first preferred stock, \$1,000 second preferred stock, and \$1,800 common stock of the new company. An option was extended to the bondholders to subscribe to an issue of consolidated 4 per cent bonds of the new company, limited to \$5,500,000, on the basis of 67 per cent of their holdings of old bonds. Upon payment of the subscription to this issue, each bond was entitled to a bonus of \$469 first preferred stock, \$670 second preferred stock, and \$1,206 common stock of the reorganized company. The net result of depositing a \$1,000 defaulted bond, paying the assessment thereon, and subscribing to \$670 of the par value of the new bond issue, was that the owner was entitled to receive \$670 in bonds of the new issue and \$5,285 of the capital stock of the St. Louis & San Francisco Railroad.

The capital obligations of the St. Louis & San Francisco Railway Company at the time of the former receivership amounted to \$68,746,726.20. Of this, \$42,387,426.20 was bonds and \$26,359,300 was stock.

The new company began operations under the reorganization with a total capitalization of \$80,974,438.70, an increase of \$12,227,712.50. Of the capital of the new company, \$36,383,626.20 was represented by bonds, and \$44,590,812.50 by capital stock of an authorized issue of \$50,000,000. The capital stock that was not issued was placed in the treasury of the new company. The defaulted issue of \$11,494,800 of consolidated 4 per cent bonds of the railway company, as well as its capital stock, was canceled and a new issue of \$5,500,000 of consolidated 4 per cent bonds was uttered under the plan of reorganization, the other outstanding bonds of the old company being assumed by the reorganized company.

Part of the new bonds of the reorganized company were used for the acquisition of certain leased lines of the St. Louis & San Francisco Railway Company, known as the Salem Branch and the Beaumont Branch. Eliminating the securities applied to the purchase of these branches, there was an increase in capital of \$9,809,112.50, without any increase in mileage. The fixed charges, however, were not increased, as the old company's fixed charges amounted to \$2,234,122, while those of the new company aggregated \$1,994,330, a saving of \$239,792 per annum.

The following comparative table shows the outstanding securities of the old company and those issued and assumed by the reorganized company.

	St. Louis & San Francisco Ry. Co.	St. Louis & San Francisco R. R. to July 1, 1896.
St. Louis & San Francisco Ry. second mortgage sixes.....	\$5,666,500.00	\$5,666,500.00
St. Louis & San Francisco Ry. (N. & W. Division sixes).....	1,040,000.00	1,040,000.00
St. Louis & San Francisco Ry. first mortgage trust sixes of 1890.....	984,000.00	984,000.00
St. Louis & San Francisco Ry. first mortgage trust fives of 1887.....	1,089,000.00	1,089,000.00
St. Louis & San Francisco Ry. general mortgage sixes.....	7,807,000.00	7,807,000.00
St. Louis & San Francisco Ry. general mortgage fives.....	12,283,000.00	12,283,000.00
St. Louis W. & W. first mortgage sixes.....	2,000,000.00	2,000,000.00
St. Louis & San Francisco Ry. consolidated fours.....	11,494,800.00	Cancelled.
Equipment lease warrants.....	3,126.20	3,126.20
St. Louis & San Francisco Ry. common stock.....	11,859,300.00	Cancelled.
St. Louis & San Francisco Ry. preferred stock.....	10,000,000.00	Cancelled.
St. Louis & San Francisco Ry. first preferred stock.....	4,500,000.00	Cancelled.
St. Louis & San Francisco R. R. consolidated fours.....		5,491,000.00
St. Louis & San Francisco R. R. common stock.....		28,397,664.00
St. Louis & San Francisco R. R. first preferred stock.....		4,984,900.00
St. Louis & San Francisco R. R. second preferred stock.....		14,208,247.00
Total.....	68,746,726.20	80,974,438.70

¹The difference between \$11,494,800 and the \$13,000,000 referred to in the text represents bonds that were in the hands of the Atchison, Topeka & Santa Fe, pledged by that company as collateral, and not considered as outstanding.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY CAPITAL STOCK.

The capital stock of the Frisco issued for reorganization purposes July, 1896, amounted to \$50,000,000, of which \$5,409,207.50 was placed in the treasury of the company.

	Issued.	Placed in treasury.
Common.....	\$29,000,000	\$3,602,355.40
First preferred.....	5,000,000	15,099.10
Second preferred.....	16,000,000	1,791,753.00
Total.....	50,000,000	5,409,207.50

No change occurred in these issues beyond authorizing increases to \$200,000,000 to comply with Missouri laws, until March, 1913, when an additional issue of \$1,364,000 of second preferred stock was placed in the treasury to reimburse the Frisco for equipment expenditures

in excess of the amount of bonds drawn from the trustee of the general lien mortgage under the terms of this instrument for reimbursement for such expenditures.

The amount of its own capital stock owned by the Frisco on May 27, 1913, was:

Common.....	\$149. 60
First preferred.....	6, 535. 10
Second preferred.....	1, 364, 153. 00
Total.....	1, 370, 837. 70

Out of a total of 36,023 whole shares of common stock owned by the Frisco 19,100 shares were exchanged at par with bondholders of the Kansas City Southwestern Railroad, the Kansas Midland Railway, and the St. Louis & San Francisco Railway companies for bonds of these companies, under the several plans of reorganization affecting them, and 16,922 shares were exchanged in 1903 for common stock of the Rock Island Company of New Jersey and bonds of the Chicago, Rock Island & Pacific Railway. Of the first preferred stock, 86 shares were exchanged with bondholders of the St. Louis & San Francisco Railway. Of the second preferred stock 687 shares were exchanged with bondholders of the several companies above named and 17,230 shares were sold in December, 1901, and January, 1902, at 70 to the following:

	Shares.		Shares.
Theodore Greppo.....	2, 030	Nathaniel Thayer.....	2, 000
W. J. Wilson.....	1, 900	Wilbur F. Boyle.....	250
H. Clay Pierce.....	800	Henry I. Priest.....	250
Strong Sturgis & Co.....	2, 000	McIntyre & Marshall.....	300
H. B. Hollins & Co.....	2, 000	Total.....	17, 230
B. P. Cheney.....	700		
Wm. A. Merrick.....	5, 000		

The discount of \$516,900 occasioned by these sales was charged to profit and loss. These transactions virtually disposed of all of the stock of the Frisco received by it from the reorganization committee in 1896.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY FUNDED DEBT.

The funded debt of the Frisco on June 30, 1897, the first year after the reorganization, amounted to \$37,288,850, covering 1,145 miles of proprietary and owned lines outside of the State of Texas, or an average of \$32,566.70 per mile. On May 27, 1913, the funded debt, including \$10,423,937.68 of equipment trusts, amounted to \$244,003,958.72, covering 3,522.59 miles of owned line, or an average of \$69,268.34 per mile. The interest-bearing debt had been increased \$206,715,108.72, or 554 per cent, over 1897, while the owned mileage had been increased 208 per cent, and the average per mile had been

increased \$36,701.64, or 112 per cent. This statement includes \$28,582,930.01 of the Frisco-New Orleans, Texas & Mexico division bonds outstanding, which are both a direct and indirect lien on the south Texas lines. If these were excluded the result would be:

Total increase to May 27, 1913.....	\$178,132,178.71
Increase, per cent.....	477
Average per mile.....	\$61,154.16
Increase per mile.....	\$28,587.46

In order to acquire the capital stocks of the Chicago & Eastern Illinois and the Kansas City, Fort Scott & Memphis Railway, the following Frisco obligations had been issued:

Stock trust certificates for Chicago & Eastern Illinois common stock.....	\$18,044,500
Stock trust certificates for Chicago & Eastern Illinois preferred stock....	12,603,750
Stock trust certificates for Kansas City, Fort Scott & Memphis preferred stock.....	15,000,000
	<hr/> 45,648,250

Excluding the \$28,582,930.01 of New Orleans, Texas & Mexico division bonds, the Frisco's increased funded debt on May 27, 1913, amounted to \$178,132,178.71, while its notes outstanding at the same period aggregated \$5,413,765.42. Thus the fixed and floating debt had been increased \$183,545,944.13. The increase in capital expenditures for property and equipment from June 30, 1897, excluding \$3,557,739.76 discount on Frisco bonds which was charged to the property account, aggregated on May 27, 1913, \$103,275,651.21. The discounts on the funded debt securities issued by the Frisco during the same period approximated \$28,828,362.72. The increase in fixed and floating debt above referred to is summarized as follows:

Property expenditures.....	\$103,275,651.21
Funded debt issued for stock of Chicago & Eastern Illinois Railroad and Kansas City, Fort Scott & Memphis Railway.....	45,648,250.00
Discount on funded debt.....	28,828,362.72
	<hr/> Total..... 177,752,263.93

The fixed and floating debt obligations issued during the period from June 30, 1897, to May 27, 1913, were \$5,793,680.20 in excess of the above quoted expenditures, and that amount represents in part the cost of securities of other companies acquired by the Frisco and its own bonds held in the treasury.

The general practice of the Frisco in issuing its funded obligations for the acquisition of properties of other companies was to authorize the issuance of its securities to acquire the bonds, and in some cases the bonds and stock of the company whose property it was to purchase. Cash expenditures made for properties, additions, and betterments, or securities of other companies, were certified by Frisco officials to the trustee under one or more of its mortgages, and thereupon the trustee authenticated and delivered to it bonds as provided

for in the terms of the mortgage. The bonds thus acquired were placed in the treasury of the Frisco, subject to sale according to its needs.

It does not appear that in any instance the Frisco received par for its securities received from trustees, placed in its treasury, and sold therefrom. Neither did it obtain par for its securities sold direct when issued. The discounts upon its securities sold below par varied. Prices ranging from 68 to 98 were obtained for the sale of its bonds. The former price was received on a part of the issue of Frisco refunding fours sold in 1908. The latter price was obtained for its two-year 5 per cent notes sold to Moseley & Company in June, 1911. The sale of securities at less than par resulted in the large item of discount hereinbefore referred to.

In addition to the issue and sale of its own obligations the Frisco received from the Kansas City, Fort Scott & Memphis Railway, the capital stock of which is all owned by the Frisco and which it operates under lease, \$14,185,000 of 4 per cent refunding bonds to reimburse it for advances made on account of additions and betterments to the property, and to retire underlying issues of the Kansas City, Fort Scott & Memphis. These bonds were obtained from time to time under the terms of the mortgage on that property securing the issue of its refunding fours, and were sold at prices ranging from 62½ to 90. The lower price was secured on a sale to Seligman & Company in July, 1908. The discount on the sale of these bonds amounted to \$3,172,948.60, which sum is in addition to the discount on issues of the Frisco.

The holdings of the Frisco funded debt securities held in Europe approximate \$52,500,000, \$46,500,000 of which are Frisco general lien 5 per cent bonds (\$23,000,000 of this issue being designated as a French series) and \$6,000,000 of the Frisco-New Orleans, Texas & Mexico division 5 per cent bonds (\$5,000,000 of which is also designated as a French series).

The general lien bonds were marketed through Speyer & Company and the bonds of the New Orleans, Texas & Mexico division were placed through Salomon & Company.

The last recorded sale of the general lien French series 5 per cent bonds was effected April 24, 1913, when a block of \$1,000,000 was sold at 80 and accrued interest, less 2 per cent commission, or an actual price of 78 and accrued interest. Additional sales of the same class of bonds to Speyer & Company were effected on May 2, 1910, and May 10 and May 14, 1910, \$500,000 each, all at the price stated above. The last sale of New Orleans, Texas & Mexico division bonds was effected in December, 1912, when \$747,000 par value thereof were sold to Salomon & Company and G. H. Walker & Company at 90.

In addition to the funded debt liability of the Frisco, it has endorsed its guarantee upon the following bonds, the several amounts outstanding on June 30, 1912, being shown:

Bonds of other companies guaranteed.

Name of issuing company.	Due.	Amount.	Rate.	Annual interest.
Kansas City, Clinton & Springfield Ry. first mortgage bonds..	1925	\$3,274,000	5	\$163,700
Kansas City Terminal Ry. first mortgage bonds.....	1960	125,044,000	4	1,008,760
New Orleans Terminal Co. first mortgage fifty-year gold bonds.....	1953	14,000,000	4	560,000
Birmingham Terminal Co. first mortgage bonds.....	1957	2,000,000	4	77,000
Rock Island-Frisco Terminal Ry. Co. first mortgage bonds....	1927	3,390,000	5	169,500
The Wichita Union Terminal Ry. Co. first mortgage bonds....	1941	2,300,000	4½	108,400
				2,078,000

¹Also guaranteed by 11 other railroad companies.

²Also guaranteed by Southern Railway Co. jointly with the Frisco.

³Also guaranteed by 5 other railroad companies.

⁴Excludes interest on bonds in treasury.

⁵Also guaranteed by the Chicago, Rock Island & Pacific Railway Co. jointly with the Frisco.

⁶Also guaranteed by 3 other railroad companies.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY CAPITAL STOCK AND FUNDED AND FLOATING DEBT.

The capital stock and funded debt of the Chicago & Eastern Illinois Railroad Company on June 30, 1900, aggregated \$42,661,003.25, divided as follows:

Common stock.....	\$12,044,800.00	
Preferred stock.....	7,696,600.00	
Total capital stock.....		\$19,741,400.00
Bonds.....	22,682,900.00	
Equipment trust notes.....	236,703.25	
Total funded debt.....		22,919,603.25
Total capital liability.....		42,661,003.25

The capital liabilities, including short-term notes outstanding on May 27, 1913, aggregated \$101,009,731.25, an increase of \$58,348,728.

The amount outstanding at the latter date was distributed as follows:

Common stock.....	\$13,626,100.00
Preferred stock.....	12,191,700.00
Bonds.....	63,155,200.00
Equipment trust notes.....	6,917,000.00
Notes payable.....	5,119,731.25
Total capital liability.....	101,009,731.25

The increases in the capital liability during this period consist of:

Common stock.....	\$1,581,300.00
Preferred stock.....	4,495,100.00
Bonds.....	40,472,300.00
Equipment trust notes.....	6,680,296.75
Notes payable.....	5,119,731.25
Increased capital liabilities.....	58,348,728.00

The increase in capital stock, bonds, and notes is accounted for by the following expenditures:

Additions and betterments.....	\$10, 785, 080. 64
Acquisition of other railroads.....	9, 100, 914. 48
Expenditures account of the Evansville & Indianapolis Railroad....	2, 302, 860. 46
Equipment.....	24, 434, 885. 99
Coal properties purchased.....	4, 418, 632. 11
Total expenditures.....	51, 042, 373. 68
Net discount on bonds sold.....	2, 151, 951. 17
Total accounted for.....	53, 194, 324. 85

In several instances capital stock of the Chicago & Eastern Illinois Railroad was sold above par. On such sales premiums were realized to the extent of \$495,000. Adding this sum to the increase in the capital liabilities the difference between that item and the amounts expended, including discount, aggregates \$5,649,403.15. This latter amount represents in part securities of various companies acquired by the Chicago & Eastern Illinois Railroad, and securities of its own issue held in the treasury. Of the total net discount on sale of bonds \$1,826,302.14 is still carried on the books as an asset.

GENERAL CONSOLIDATED AND FIRST MORTGAGE 5 PER CENT BONDS.

The last sale of Chicago & Eastern Illinois Railroad general consolidated and first mortgage 5 per cent bonds was on January 6, 1913, when \$258,000 par value thereof were sold to Kuhn, Loeb & Company at 105 and accrued interest, less one-half of 1 per cent commission.

From July, 1902, to January, 1903, \$960,000 par value of this issue were sold to Flower & Company, of New York, at prices ranging from 121 to 124½ and accrued interest. During 1907, \$3,000,000 par value were sold to Speyer & Company at 105 and accrued interest, less 1 per cent commission, with the understanding that the bankers were to divide equally with the company whatever profit was realized on the bonds over and above the price of 105 and interest. These bonds were sold by Speyer & Company at prices ranging from 105 to 110.65. The profit realized by the Chicago & Eastern Illinois Railroad from such sales amounted to \$17,497.20.

REFUNDING AND IMPROVEMENT MORTGAGE 4 PER CENT GOLD BONDS.

The last sale of refunding and improvement mortgage 4 per cent gold bonds was on June 23, 1911, when \$864,000 par value were sold to J. and W. Seligman & Company at 80½ and interest. Other bonds of this issue were sold to banking firms at various dates previous to June 23, 1911, at prices ranging from 75 to 92.53 and interest.

PURCHASE MONEY FIRST LIEN 5 PER CENT COAL BONDS.

From February 16 to May 1, 1912, bonds of the par value of \$4,506,000 were issued for the purchase of certain coal properties, rights, etc., in Indiana and Illinois. February 16, 1912, interim bonds having a par value of \$2,680,000 were delivered to Kuhn, Loeb & Company at 89 as of February 1, 1912, and the proceeds, with interest to February 16 at 2 per cent, amounted to \$2,387,187.67. On the same day the Chicago & Eastern Illinois Railroad gave its note for \$300,000 and received that sum from Kuhn, Loeb & Company, which it deposited in the National City Bank. Simultaneously a check was drawn on the National City Bank to the order of Kuhn, Loeb & Company for \$292,812.33. Kuhn, Loeb & Company then made one check to the Central Trust Company, trustee under the mortgage, for \$2,680,000, the transaction having the effect of concealing from the trustee the price at which the bonds were sold.

May 1, 1912, \$1,826,000 par value of temporary bonds were delivered to Kuhn, Loeb & Company at 89, and the proceeds thereof, \$1,647,965, including accrued interest amounting to \$22,825, were deposited with the Central Trust Company. By these transactions the total amount deposited with the trustee was \$4,327,965, out of which there was paid—

To J. H. Byrd for the Burnwell, Korthkamp, Peabody, West Jackson Hill, and Oak Hill coal properties.....	\$3, 198, 043. 00
Payment for Montgomery properties.....	761, 060. 00
Accrued interest.....	22, 825. 00
	<hr/>
	3, 981, 928. 00
Cash returned to treasurer of Chicago & Eastern Illinois.....	291, 856. 40
Cash remaining on deposit with the Central Trust Company for purchase of additional properties.....	54, 180. 00
	<hr/>
	4, 327, 965. 00

June 27, 1912, bonds having a par value of \$525,000, and on February 10, 1913, bonds having a par value of \$136,000 were delivered to Kuhn, Loeb & Company at 89 and interest. The Chicago & Eastern Illinois drew checks to the order of Kuhn, Loeb & Company for the discount, amounting to \$72,710, in order that Kuhn, Loeb & Company could deposit with the trustee \$661,000, the par value of the bonds, again concealing from the trustee the price at which the bonds were sold.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

DISCOUNTS, PREMIUMS, AND COMMISSIONS.

The discounts on bonds and notes other than short-term notes issued by the Frisco and the Kansas City, Fort Scott & Memphis Railway, which is controlled by the Frisco, including premiums paid for retirement of underlying issues and commissions paid banks or bankers, aggregated \$32,152,602.07. To this must be added \$234,431.73, repre-

senting stamps, etc., on the general lien bonds sold in Europe, making total of \$32,387,033.80. Subtracting the premiums obtained in the exchange of one form of securities for the retirement of others, amounting to \$1,486,852.25, there remains a net balance of \$30,900,181.55 discount borne by the Frisco since it began its refunding operations in 1901.

The disposition of this by the Frisco has been as follows:

Charged to the cost of property.....	\$8,557,739.
Charged to the cost of leasehold property.....	1,112,396.
Charged to income.....	1,021,106.
Charged to profit and loss (net).....	7,238,647.

	17,929,889.
Leaving a balance unamortized and carried as an asset of.....	12,970,291.

Total..... 30,900,181.

Tables follow which show the amount of discount applied to each issue of securities, as well as the names of the banks or bankers to whom the securities were sold. A separate table shows how the commissions paid bankers, amounting to \$3,106,118.05, were distributed among banks and bankers. It will be seen that the greater part was paid to James Speyer & Company in the sale to them of the Frisco general lien bonds.

The discounts applicable to securities of the Frisco aggregated \$28,828,362.72, and upon securities of the Kansas City, Fort Scott & Memphis Railway \$3,324,239.35. The total funded debt liability of the Frisco on May 27, 1913, was \$244,003,958.72, of which \$4,759,521.04 was held in the treasury. The net liability was \$239,244,437.68. From these facts it is seen that of the net amount of funded debt outstanding 12.05 per cent represents discount and commissions. This proportion has been increased since that date by treasury holdings which were pledged as collateral under loans having been confiscated by the holders of the notes and sold by them at prices considerably less than par.

In addition to the above-mentioned discounts and commissions \$200,900 was paid to J. P. Morgan & Company in 1903. It appears that during the period February to May, 1903, Morgan & Company had purchased from the Frisco more than \$6,000,000, par value, of its refunding 4 per cent bonds, at prices ranging from 80 to 85. More than \$20,000,000 of this issue of bonds was held by the Seligman syndicate which had acquired them from the Frisco at a price of 93½ in July, 1901, for the purpose of refunding underlying issues of the Frisco. While no correspondence was obtainable on the subject it is understood that Morgan & Company desired further protection than that afforded by the discount in order to protect them from the effect of marketing the bonds held by the Seligman syndicate, and that the Frisco awarded them 1 per cent on the amount of bonds not yet marketed by the Seligman syndicate, paid that sum to Morgan & Company in cash, and charged it to the property account.

Flat & hits.	Prince & Erb.	F. S. Mose- ley & Co.	St. Louis Union Trust Co.	The Trust Co. of America.	Mercantile Trust Co.	New York Trust Co.	Various bond holders.
			\$325,000.00				
			322,689.09			\$43.55	
		\$45,000					\$3,141.04
				\$345,000	\$43,750		
090.00							
937.50							
	\$100,200.63						
	.68		397.07				94,625.00
							1,900.00
							76.33
475.00							
212.00							9,118.75
							3,875.00
714.50	100,201.31	45,000	648,086.16	245,000	43,750	43.55	112,736.12



Commissions paid to banks and bankers.

Names.	Total	Frisco refunding bonds.	Frisco general lien bonds.	Frisco consoli- dated 4 per cent bonds.	Frisco N. O. T. & M. division first-mort- gage bonds.	Frisco two-year 6 per cent notes.	Frisco one-year 6 per cent notes.	Frisco two-year 5 per cent notes.	Frisco five-year 4 per cent notes.	K. C. Fort B. & M. refund- ing bonds.	K. C. Fort B. & G. first-mortgage bonds.	St. L., M. & S. E. 4 per cent bonds.
Van Speyer & Co.	\$1,831,660.00		\$1,831,660.00	\$406,700.00								
Sellman & Co. (Syndicate)	406,700.00											
Salomon & Co. and Walker & Co.	300,000.00				\$300,000.00							
Salomon & Co.	52,000.00					\$52,000.00						
F. S. Moseley & Co.	22,500.00							\$22,500.00				
Prince & Erb	100,200.63											\$100,200.63
J. P. Morgan & Co.	\$4,360.00										\$4,360.00	
Moffat & White	82,212.00										\$82,212.00	
Blair & Co.	725.00									\$725.00		
Berliner Handels Gesellschaft.	9,777.50											
Hallgarten & Co.	7,332.92											
The Trust Co. of Amerie	245,000.00								\$245,000.00			
Mercantile Trust Co.	43,750.00						\$43,750.00					
Total	3,106,118.03	21,470.43	1,831,660.00	406,700.00	300,000.00	52,000.00	43,750.00	22,500.00	245,000.00	725.00	82,212.00	100,200.63

*** Commission; paid for extending time o. maturity, the period varying from one to three years.**

OPERATED MILEAGE.

The railroad acquired by the Frisco from the receivers of the St. Louis & San Francisco Railway Company consisted of 989 miles owned and 57 miles of six separate companies, the capital stock of which was received from the reorganization committee and held in the treasury of the Frisco. The Frisco also acquired by purchase from the reorganization committee the St. Louis, Salem & Arkansas Railway, 54 miles, and the Kansas City & Southwestern Railway, 62 miles, lines formerly operated by the St. Louis & San Francisco Railway, making a total mileage operated for the fiscal year 1896-97 of 1,162 miles.

The total mileage operated on May 27, 1913, was 4,741 miles, of which the Frisco owned 3,523, leased 1,205, and had trackage rights over 13. The increased operated mileage of 3,579 miles was secured by the acquisition of 16 lines by the Frisco, the leasing of the Kansas City, Fort Scott & Memphis, 919 miles, and the Kansas City, Memphis & Birmingham Railroad, 286 miles, and the acquisition of trackage rights over the lines of four additional companies. The following is a list of the lines acquired by purchase, with the approximate mileage thereof:

	Miles.
Atlantic & Pacific Railroad.....	112
Fayetteville & Little Rock Railroad (extension).....	8
St. Louis & Oklahoma City Railway.....	103
Kansas, Oklahoma & Gulf Railway.....	18
Kansas City, Osceola & Southern Railway.....	147
Arkansas & Oklahoma Railroad.....	47
St. Louis, Oklahoma City & Southern Railway.....	193
Kansas Midland Railway.....	106
St. Louis, San Francisco & New Orleans Railroad.....	233
Oklahoma City & Western Railroad.....	175
Blackwell, Enid & Southwestern Railway.....	239
Sulphur Springs Railroad.....	9
Ozark & Cherokee Central Railroad.....	144
Arkansas Valley & Western Railroad.....	175
St. Louis, Memphis & Southeastern Railroad.....	685
Oklahoma City Terminal Company.....	1½
Total.....	2,375½

The original mileage acquired from the reorganization committee experienced but few changes. The net result of extensions and abandonments and the elimination from the Frisco of 16.94 miles of the Paris & Great Northern Railroad, which is now included in the operations of that company and reported separately as in the case of other Texas lines, added 2½ miles.

FRANCHISE AND PROPERTY.

The property investment of the Frisco on May 27, 1913, amounted to \$193,923,092.77. This includes certain stocks and bonds of the north Texas lines aggregating \$6,667,000 par value, which were acquired in part from the reorganization committee and in part by the purchase of securities some of which are applicable to properties a portion of whose lines extended into the State of Texas. While the cost of these securities remains in the property account they were deducted therefrom for reporting purposes and reported as securities owned in order to avoid duplication by reporting them both by the Frisco and the reporting Texas companies. The elimination of the amount so reported as securities reduces the book value of the Frisco's property to \$187,256,092.77, distributed as follows:

Net cost of property purchased from the reorganization committee.... \$79,254,232.00

New lines, including north Texas lines:

Arkansas Valley & Western.....	\$4,306,769.83	
Atlantic & Pacific.....	1,878,385.06	
Arkansas & Oklahoma.....	350,274.67	
Blackwell, Enid & Southwestern.....	4,601,344.87	
Kansas, Oklahoma & Gulf.....	113,364.80	
Kansas Midland.....	2,164,055.01	
Kansas City Southwestern.....	1,204,504.09	
Kansas, Osceola & Southern.....	2,920,409.21	
Kansas Southwestern.....	761,375.00	
Oklahoma City Terminal Co.....	51,754.96	
Oklahoma City & Western.....	4,339,231.50	
Ozark & Cherokee Central.....	2,980,000.00	
St. Louis, San Francisco & New Orleans.....	8,538,035.84	
St. Louis, Memphis & Southeastern.....	22,606,769.83	
St. Louis, Oklahoma & Southern.....	4,654,300.33	
St. Louis, Salem & Arkansas.....	1,204,583.46	
St. Louis & Oklahoma City.....	2,150,611.39	
Sulphur Springs.....	162,470.45	
Fort Smith & Van Buren Bridge.....	349,000.00	
Red River, Texas & Southern.....	1,419,009.40	
Fort Worth & Rio Grande.....	2,996,042.47	
		69,752,292.17
Expenditures for additions, betterments, and new equipment.....		39,866,578.31
Miscellaneous adjustments.....		10,134.88
Discount and premiums, net.....		¹ 6,315,605.41
		<u>195,198,842.77</u>

Less:

Appraised book value of Arizona and New Mexico

lands transferred to securities owned..... \$1,275,750.00

Securities of north Texas lines deducted at par.... 6,667,000.00

7,942,750.00

187,256,092.77

¹ The balance of discount and commissions is charged to new lines.

Commissions paid to banks and bankers.

Names.	Total	Frisco refunding bonds.	Frisco general lien bonds.	Frisco consolidated 4 per cent bonds.	Frisco N. O. & W. division first-mortgage bonds.	Frisco two-year 6 per cent notes.	Frisco one-year 6 per cent notes.	Frisco two-year 5 per cent notes.	Frisco five-year 4 per cent notes.	K. C. Fort & M. refunding bonds.	K. C. Fort & G. first mortgage bonds.	St. L. M. & S. E. 4 per cent bonds.
Jan. Speyer & Co.	\$1,831,560.00		\$1,831,560.00	\$406,700.00								
Seligman & Co. (Syndicate)	300,000.00											
Salomon & Co. and Walker & Co.	300,000.00				\$300,000.00							
Salomon & Co.	52,000.00				\$52,000.00							
P. S. Messer & Co.	22,500.00							\$22,500.00				
P. S. Messer & Co.	100,200.63											\$100,200.63
T. P. Morgan & Co.	4,360.00	\$4,360.00										
Moffat & White	82,212.00									\$82,212.00		
Blair & Co.	725.00									\$725.00		
Berliner Handels Gesellschaft	9,777.50	9,777.50										
Haligarten & Co.	7,332.92	7,332.92							\$7,332.92			
The Trust Co. of America	245,000.00								\$245,000.00			
Mercantile Trust Co.	43,750.00						\$43,750.00					
Total	3,106,118.08	21,470.42	1,831,560.00	406,700.00	300,000.00	52,000.00	43,750.00	22,500.00	245,000.00	725.00	82,212.00	100,200.63

Commission paid for extending time of maturity, the period varying from one to three years.

Retirements.

Year.	Number of units.	Year.	Number of units.
1906.....	1,624	1910.....	902
1907.....	1,983	1911.....	537
1908.....	1,694	1912.....	357
1909.....	3,304	1913.....	200

The charges to profit and loss and to operating expenses on account of these retirements decreased from \$459,852.71 in 1906 to \$134,954.41 in 1913.

Proper provision has not been made for depreciation of equipment, inasmuch as but one-fourth of 1 per cent has been charged in recent years. This is indicative of a desire to comply technically with the Commission's classification of operating expenses, but it evidences an utter disregard of the true measure of depreciation or obsolescence in equipment.

The book value of the equipment owned by the Frisco and the Kansas City, Fort Scott & Memphis, and Kansas City, Memphis & Birmingham lines, as reported to the Interstate Commerce Commission June 30, 1912, aggregated \$46,995,499.47, on which depreciation for the year amounting to \$103,152.90 was charged to operating expenses. If a rate of 2 per cent had been used on that value for the fiscal year 1912, the charge would have amounted to \$939,909.99, while a charge of 3 per cent would have amounted to \$1,409,864.98. The income surplus after dividends for the year amounted to \$344,412.42, which would have been converted into a deficit of \$492,344.67 on the basis of a 2 per cent depreciation charge, and of \$962,299.66 on a 3 per cent depreciation basis. Applying the same principle to the book value of equipment reported to the Commission for the fiscal year 1911, namely, \$44,913,571.12, on which depreciation to the extent of \$99,712.85 was charged during the fiscal year, the charge would be \$898,271.42 on a 2 per cent basis and \$1,347,407.13 on a 3 per cent basis. The credit balance of income for the fiscal year 1911 was \$1,816,059.79, which would have been reduced to \$1,017,501.22 and to \$568,365.51 on a 2 per cent and 3 per cent depreciation charge, respectively.

Reports from the master mechanic dated July, 1913, show nine locomotives set aside to be scrapped, some of which have been retired from service since July, 1908. The scrapping of these locomotives has been deferred apparently to avoid making that charge to operating expenses. At different times since August, 1908, 28 additional locomotives have been set aside which are considered unfit for service and are only fit to be scrapped. They have not been scrapped because of the effect that action would have upon operating expenses. The total amount involved in these locomotives

is \$174,465.78, which sum, less salvage, would be charged to operating expenses if the Commission's classification were adhered to at the time of scrapping.

CONTRACT WITH AMERICAN CREOSOTING COMPANY.

A contract was executed March 1, 1907, between the American Creosoting Company, Henry C. Starr, president, and the St. Louis & San Francisco Railroad Company, A. J. Davidson, president, under which the creosoting company agreed, at its own cost and expense, to erect and complete ready for full operation not later than the 1st day of September, 1908, two plants for treating ties and timber with the creosoting process, said plants to be located at or near Springfield, Mo., and Hugo, Okla. The plants were to be equipped with appliances necessary for the successful treatment each year during the life of the contract of 1,250,000 ties at each plant.

The creosoting company agreed that the plants should be devoted solely to the purpose of treating ties for the railroad company, and that it would not, without the written consent of the railroad, treat ties or other material for others, or do any commercial business at either plant.

The railroad company agreed to deliver free on board cars at each of the plants not less than 65,000 ties within 60 days after completion of the plants, and thereafter, from time to time, to deliver ties for each of the plants to the extent of 750,000 per year. The railroad company further agreed to transport over its line without charge all material and machinery entering into the construction of said plants, all supplies, oil, fuel, etc., which might be used in treating its ties, and to furnish without charge personal transportation over its rails for the officers and agents of the creosoting company while engaged in going to and from the plants on the business of the creosoting company.

The railroad company agreed to pay the creosoting company 28½ cents for each tie treated.

It is understood that this sum was based upon the price of 6 cents per gallon for creosote oil delivered at the plants, and the use of 2½ gallons of creosote oil for each tie treated. If such oil cost more or less than 6 cents per gallon when delivered there was to be a corresponding increase or decrease in the price per tie paid by the railroad company.

In case, upon the written request of the railroad company, more or less than 2½ gallons per tie was used the price per tie for treatment was to be proportionately changed. The railroad was to make an additional payment of one-fourth of one cent per gallon for all creosote oil used by the creosoting company in treating the railroad company's ties.

The railroad company was in no event to pay the creosoting company more than 40 cents per tie for treatment.

This agreement was to continue in full force until January 1, 1918, and for a further period of 10 years unless the railroad company should notify the creosoting company in writing six months prior to that date of its desire to purchase the plants. Should the railroad company elect to purchase the plants it was to pay the original price paid by the creosoting company for the real estate upon which the plants are located, with interest at the rate of 5 per cent per annum from the date of original purchase, to which would be added the full value of said plants taken as a going concern, as such value might be agreed upon by the parties.

From the terms of this contract it will be noted that ties were to be creosoted at a price varying from 28½ cents to 40 cents per tie. In addition to the minimum price the excess cost of oil over 6 cents per gallon, the excess amount of oil used over 2½ gallons per tie, and an extra allowance of one-fourth of a cent per gallon of oil used accrued to the creosoting company.

An analysis of the vouchers in favor of the creosoting company from July 1, 1911, to July 31, 1913, shows payments to it aggregating \$861,173.44, covering the cost of creosoting 2,744,254 ties at an average rate of 31.35 cents per tie. The distribution of the payments indicates a considerable payment on account of excess cost and excess quantities of oil:

Cost, at 28½ cents.....	\$782,056.35
Excess cost of oil over 6 cents per gallon.....	50,051.37
Excess oil used over 2½ gallons per tie.....	6,801.93
Allowance of one-fourth of 1 cent per gallon.....	21,483.54
	<hr/>
	860,393.19
Miscellaneous payments.....	780.25
	<hr/>
Total vouchers issued.....	861,173.44

In comparison with the prices paid by the Atchison, Topeka & Santa Fe and Missouri, Kansas & Texas Railways for treating ties the price paid under this contract appears extravagant. The Atchison, Topeka & Santa Fe pays from 14 cents to 17½ cents per tie, according to the class of wood. It uses approximately 1½ gallons per tie of a creosoting named "Rupeing," the cost of which is 7 cents per gallon at the port. If the Santa Fe used the same quantity of preservative per tie as is provided for in the Frisco contract its price would vary approximately from 21½ cents to 25 cents per tie.

The average cost of creosoting ties on the Missouri, Kansas & Texas Railway is 18.759 cents per tie. The amount of preservative used is 1.691 gallons per tie and it costs 7.58 cents per gallon. If this company used 2½ gallons per tie, as is provided for in the Frisco contract, the cost per tie would be approximately 25 cents.

This matter was taken up with the Frisco's vice president in charge of purchases with a view to determining what safeguards were provided to insure the use on each tie of the quantity of preservative called for in the contract. He stated that the subject had been investigated and reported upon by the proper officials of the Frisco, but the files containing such reports could not be found.

Inquiries developed the fact that Daniel G. Reid, of the Chicago, Rock Island & Pacific Railway, is one of the officials of the creosoting company,¹ and the information that similar contracts were executed at the same time by the Chicago, Rock Island & Pacific and the Chicago & Eastern Illinois with the American Creosoting Company.

It is understood that by mutual consent the operation of the Frisco contract has been suspended for two years, this action having been effected by the Frisco receivers.

PURCHASE OF THE KANSAS CITY, FORT SCOTT & MEMPHIS RAILROAD COMPANY BY THE KANSAS CITY, FORT SCOTT & MEMPHIS RAILWAY COMPANY.

An agreement was executed June 29, 1901, between the Kansas City, Fort Scott & Memphis Railroad Company and the Kansas City, Fort Scott & Memphis Railway Company, a newly organized company, under which the latter company was to acquire the property and franchises, subject to all existing liens, and also the current assets and liabilities of the former company.

The purchase price was \$14,275,600, payable within 60 days to the Mercantile Trust Company, for payment to the holders of \$2,750,000 of preferred stock at \$150 per share, and to the holders of \$10,150,600 of common stock at \$100 per share. The stock was to be surrendered to the railway company which could make payment of the purchase price by delivery of the stock to the trust company.

A series of agreements was entered into under date of June 24, 1901, between parties interested, one of which was between the railway company and Mark T. Cox, James A. Blair, H. C. Pierce, Isaac N. Seligman, and J. Kennedy Tod, a committee under a syndicate agreement dated March 8, 1901. The syndicate had purchased \$10,095,800 of the common stock and \$2,670,300 of the preferred stock of the railroad company and was to pay the purchase price to the Mercantile Trust Company for account of the railway company. The syndicate was to also pay for certain construction of the Kansas City, Fort Scott & Memphis Railway Company of Oklahoma and to transfer the entire capital stock of that company to the railway company. They were also to pay the cost of relaying new rail between Baxter Springs and Miami, Okla., and to transfer to the

¹Mr. Reid subsequently denied that he has ever been associated with the American Creosoting Company.

railway company 29,427 shares of the capital stock of the Kansas City, Memphis & Birmingham Railroad.

In order to secure the funds necessary to finance this arrangement the railway company issued to the above-named committee \$11,650,000 of its refunding mortgage bonds secured by the property purchased, \$13,510,000 of its preferred capital stock, and \$15,000,000 of its common stock. The Frisco was to guarantee the mortgage bonds and was to issue \$13,510,000 of its 4 per cent preferred-stock trust certificates in exchange for the preferred stock of the railway company upon deposit by the committee with a trust company of preferred stock of the railway company in the same amount, and, in addition, was to receive the entire issue of the common stock of the railway therefor. The Committee were to offer to the stockholders of the Frisco the right of subscription to the mortgage bonds and preferred-stock certificates, the offering to consist of \$25 in bonds and \$29 in Frisco stock trust certificates for a cash payment of \$42.50. The syndicate was to underwrite the subscription, which amounted to \$19,795,770.50. Of this amount the syndicate subscribed \$14,266,203.75, which included \$66,358.75 interest, and the balance was subscribed by Frisco stockholders.

The agreement with the committee provided that they were to receive \$16,000,000 of the proceeds with interest from May 15, 1901, a 2½ per cent commission, a profit of 10 per cent to Blair & Company, J. & W. Seligman & Company, and J. Kennedy Tod & Company, 15 per cent to H. Clay Pierce, and 20 per cent to Robert Winthrop & Company, on the several amounts subscribed by them to the syndicate. The expenses of the committee, including commission, counsel fees, etc., were to be paid and any balance remaining was to be paid to the Frisco. Under this agreement the Frisco received \$440,888.25.

The property was leased to the Frisco August 23, 1901, for the term of the corporate existence of the Frisco. The property is still operated under this lease, which provides for payment of the interest on the bonds, 4 per cent dividends on the preferred stock, and all other charges. All of the earnings or income revert to the Frisco.

The effect of this transaction was that the new company, by the acquisition of the Current River Railroad and by new lines constructed, increased its operated mileage from 719.45 miles in 1900 to 850.79 miles in 1901. The \$18,529,600 funded debt of the old company, \$1,606,000 of bonds of the Current River Railroad, \$481,510 equipment bonds and \$11,650,000 of bonds of the new company were assumed by the new company. Thus there was a total increase in the funded debt of \$13,737,510, while \$28,510,000 of capital stock of the new company was issued in lieu of \$12,900,600 of stock of the old company, or a total increase in capital of \$29,346,910 against an increase in mileage of approximately 131½ miles.

It appears that only one dividend was paid by the Kansas City, Fort Scott & Memphis Railroad upon its stock, that dividend being 5 per cent upon the preferred stock in 1900, while, as has been seen, the lease provided for annual dividends of 4 per cent on the preferred stock, and the purchase of the property was made on a basis of par for the common stock and 150 for the preferred stock.

Organizing the new company and disposing of the securities through the syndicate was not a labor of love on the part of those who composed the syndicate. The commissions received by them amounted to \$494,894.44, and their profits on subscriptions were \$1,783,207.15, divided as follows:

Name.	Amount of subscription.	Commission.	Profit.	
			Rate.	Amount.
			<i>Per cent.</i>	
H. C. Pierce.....	\$3,938,647.98	\$136,631.48	15	\$590,797.20
Robert Winthrop & Co.....	3,794,540.17	131,631.48	20	758,908.08
J. and W. Seligman & Co.....	3,338,384.15	117,473.61	10	333,653.42
Blair & Co.....	711,488.96	24,680.90	10	71,148.90
Union Trust Co. of St. Louis.....	540,478.02	18,750.00		
Mississippi Valley Trust Co.....	540,478.02	18,750.00		
St. Louis Trust Co.....	540,478.02	18,750.00		
J. Kennedy Tod.....	144,150.51	5,000.00		
Isaac N. Seligman.....	144,150.51	5,000.00		
Mark T. Cox.....	144,107.81	5,000.00		
James A. Blair.....	144,150.51	5,000.00		
J. Kennedy Tod & Co.....	237,148.09	8,228.97	10	23,714.81
Total.....	14,266,203.75	494,894.44		1,783,207.15

ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY, GENERAL FACTS.

A receiver for the St. Louis, Brownsville & Mexico Railway was appointed July 4, 1913, in the person of Mr. Frank Andrews, of the law firm of Andrews, Ball & Streetman, Houston, Tex. This action was taken on a petition filed by the St. Louis Frog & Switch Company praying for a receivership on account of unpaid bills due from the railway company amounting to \$6,469.95 for material and supplies furnished by the petitioner to the railway company.

The St. Louis, Brownsville & Mexico Railway, hereinafter referred to as the Brownsville, was organized under the laws of the state of Texas, June 5, 1903, with a capital stock of \$1,000,000. The articles of incorporation of this company were signed by the following: Robert J. Kleberg; Robert Driscoll; Robert Driscoll, jr.; Arthur E. Spohn; E. H. Caldwell; Jno. G. Kennedy; R. King; James B. Wells; Uriah Lott; George F. Evans; Francisco Yturria; Thos. Carson; Jno. J. Welder; Caesar Kleberg; Jno. B. Armstrong.

The purpose of the corporation was to own and operate a railroad from Brownsville to Sinton, Tex., with a branch southeast to Star County from a point 25 miles north of Brownsville. The whole approximated 192.5 miles. A construction contract was executed between Johnson Brothers and the Brownsville which provided that the work of construction would begin within 30 days and be completed by July 1, 1904. The completed railroad was to be satisfactory to an engineer selected by B. F. Yoakum and Samuel Fordyce. The contractors were to receive payment for construction in monthly installments in the capital stock of the Brownsville which was to be deposited with the St. Louis Union Trust Company as trustee.

In order to further extend the railway to Houston, Tex., 209 miles, an additional amount of \$2,850,000 in capital stock was authorized, and for construction of the line to Bay City counsel was instructed by the directors to prepare a contract with Johnson Brothers on the basis of \$15,000 per mile, payable one-half in cash and one-half in 5 per cent bonds of the Brownsville. The railway company was to furnish the entire right of way and assume all engineering expenses.

The line extending from Brownsville to Robstown, 141.45 miles, was turned over to the railway company for operation on July 4, 1904. The 55.4 miles from Harlinger to Fordyce was opened for operation in December, 1904, and the 20.7 miles from Robstown to Sinton in April, 1905.

A committee of five, composed of B. F. Yoakum, Samuel W. Fordyce, Thomas H. West, Robert H. Brookings, and Edward

Whittaker was organized in 1903 for the purpose of constructing the railroad from Robstown to Brownsville, and they made arrangements to receive the lands and money which were donated for the purpose of aiding in the construction of the railroad and the development of the land. The committee received about 90,000 acres of land, the greater portion of which was donated by Mrs. C. King, J. G. Kennedy, J. B. Armstrong, and F. Yturria. Several small contributions of land were made by R. Driscoll, J. B. Wells and others in Brazoria and Matagorda counties. The committee agreed to buy and did buy some additional parcels of land from the contributing parties.

After obtaining the land the committee organized a syndicate, appointed the St. Louis Union Trust Company of St. Louis, Mo., syndicate manager, and turned over to the syndicate all the lands received by them, entering into an agreement with the syndicate to construct the railroad, develop the land, and carry on whatever operations seemed to be for the benefit of the syndicate. Some of the land donated was transferred to land or townsite companies, a part of the stock in which was held for benefit of the syndicate and a part by donors of the land. The land not so placed was transferred to a corporation called the West Texas Abstract & Guarantee Company and held by it for the benefit of the syndicate. In addition to the land donations cash bonuses amounting to \$40,000 were received from donors at Bay City and Brownsville, and \$150,000 was donated by the Calhoun County Cattle Company in connection with the Port O'Connor branch. The donated lands were eventually disposed of for account of the syndicate. The land deals, the cash bonuses, and the syndicate exploitations resulted in a profit to the syndicate of \$892,487.21.

The syndicate was composed of 99 members, who contributed \$3,980,999.20 toward the construction of the railroad. Additional funds were secured from the sale of temporary bonds and notes issued by the Brownsville. After the Brownsville issued its securities amounting to \$10,756,000, as authorized by the Texas railroad commission, an agreement was executed between the St. Louis Union Trust Company as syndicate manager and the Frisco, dated December 1, 1909, under which the Frisco was to purchase these, and additional securities having a par value of \$455,450, for the sum of \$11,827,200, with interest from December 1, 1909. Payment was made by the Frisco on May 26, 1910, in the sum of \$12,122,897.72.

The effect of the entire transaction was that the syndicate secured a profit of \$3,011,929.75, which included the profits on land, the cash donations, and the syndicate operations. The profit represented

75.66 per cent on the subscription of each syndicate member and was divided among the subscribers, who at final distribution were:

Name of subscriber.	Amount of subscription.	Name of subscriber.	Amount of subscription.
James H. Allen.....	\$33,333.34	J. G. Miller.....	\$10,000.00
American Central Trust Co.....	33,333.33	I. W. Morton Estate ¹	33,344.45
John Green Balfance.....	13,333.33	Jeanette F. Morton.....	16,672.22
Cora F. Barnes.....	6,666.67	H. G. Mudd.....	13,333.33
Joseph D. Bascom.....	25,083.33	Eliza McMillan.....	37,000.00
C. H. Beggs.....	38,000.00	Lucie McMillan.....	2,785.42
W. K. Bixby.....	108,000.00	N. A. McMillan.....	15,500.00
D. A. Bixby.....	1,200.00	Wm. O'Herin.....	6,522.21
W. K. Bixby, trustee.....	225.70	Isaac H. Orr.....	6,666.67
Scott H. Blewett.....	2,000.00	Mary C. Orr.....	6,666.67
Anna Bliss.....	6,666.67	L. F. Parker estate ²	37,400.00
Catherine M. Boland.....	100,333.33	Charles Parsons Pettas.....	13,333.33
J. C. Brockmeier.....	10,833.33	A. T. Perkins.....	22,000.00
Robert S. Brookings.....	159,444.44	Mrs. Eva L. Perkins.....	6,666.67
James Campbell.....	334,166.67	J. W. Peters.....	6,666.67
George H. Capen.....	3,333.33	Frank R. Rice.....	13,333.33
Sam D. Capen.....	2,833.33	Ellen F. Richard.....	10,033.33
Sam D. Capen and Geo. H. Capen.....	6,666.66	St. Louis Union Trust Co.....	216,650.01
George O. Carpenter.....	25,083.33	Andre C. Scanlan.....	25,083.33
Daniel Catlin.....	40,000.00	Phillip C. Scanlan.....	25,083.34
Alonzo C. Church.....	126,166.66	F. Schady.....	25,533.34
Percival W. Clement.....	10,000.00	Henry C. Scott estate ³	35,416.66
Mark T. Cox.....	33,333.34	John Scullin.....	76,000.00
Thos. W. Crouch.....	10,033.34	Henry Seibert.....	33,333.33
John B. Dennis.....	50,000.00	Gust Sets.....	6,666.66
Emma R. Dickson.....	7,500.00	J. H. Sheets estate ⁴	26,666.67
Joseph Dickson.....	33.33	John F. Shepley.....	29,166.66
F. V. Dubrouillet.....	1,866.66	Henry Shoemaker.....	66,666.00
Mary H. Elliott.....	6,666.66	W. A. Shoemaker.....	8,000.00
A. G. Edwards & Sons.....	96,666.67	E. C. Simmons.....	100,333.33
H. Elliott, Jr.....	6,666.66	Jay Hernden Smith.....	14,583.33
Jessie Valle Ewing.....	23.66	Joseph N. Smith.....	5,000.00
S. M. Felton.....	10,000.00	David Semmers.....	11,111.11
John D. Filley.....	23,500.00	W. B. Spaulding.....	18,333.33
Mary McKinley Filley, trustee.....	10,033.33	Speyer & Co.....	100,000.00
S. W. Fordyce.....	124,666.66	A. C. Stewart.....	2,000.00
Francis Bro. & Co.....	33,333.33	H. P. Taussig.....	11,111.11
B. B. Graham Estate ⁵	100,333.33	John R. Thomas.....	25,063.34
Wm. E. Guy.....	82,666.67	Marie B. Tiffany.....	25,063.33
Louis M. Hall.....	13,333.33	W. P. H. Turner.....	13,333.33
F. H. Hamilton.....	16,666.67	G. H. Walker & Co.....	60,666.66
E. Hawley.....	67,333.33	Anna Cecelia Warner.....	10,666.66
J. F. Hincley Estate ⁶	25,833.32	Eloise Warner.....	300.00
D. M. Houser.....	20,666.66	Thomas H. West.....	131,666.67
P. M. Johnston.....	106,666.66	M. C. Wetmore ⁷	25,063.34
Robert McK. Jones.....	25,083.33	Edward Whitaker.....	62,000.00
Joseph Lathrop.....	5,200.00	Whitaker & Co.....	91,166.67
E. F. Leonard.....	20,000.00	B. F. Yoakum.....	300,533.33
Jacques Levy Estate ⁸	8,000.00		
Edward Mallinckrodt.....	100,333.33		
Henry M. Meier.....	26,666.66		
			\$2,980,990.29

¹ Original subscriber, B. B. Graham, deceased.

² Original subscriber, J. F. Hincley, deceased.

³ Original subscriber, Jacques Levy, deceased.

⁴ Original subscriber, I. W. Morton, deceased.

⁵ Original subscriber, L. F. Parker, deceased.

⁶ Original subscriber, Henry C. Scott, deceased.

⁷ Original subscriber, J. H. Sheets, deceased.

⁸ Original subscriber, M. C. Wetmore, deceased.

A summary of the liquidation of the syndicate operations follows:

	Receipts.	Disbursements.
Balance of syndicate funds unexpended.....	\$61,729.35	
Proceeds from sale of securities to the Frisco.....	11,827,200.00	
Proceeds of land sales and cash donations.....	892,487.21	
Cash paid to St. L., B. & M. Ry.....		\$200,000.00
For redemption of \$3,000,000 mortgage bonds and \$2,340,000 notes of St. L., B. & M. Ry., with interest.....		5,475,275.95
Payment to B. F. Yoakum for services and expenses.....		55,729.08
Miscellaneous indebtedness of syndicate.....		57,452.63
Distributed to syndicate subscribers.....		6,982,928.98
Total.....	12,781,416.56	12,781,416.56

The total amount spent by the syndicate in constructing and equipping the Brownsville, based on a statement secured from the St. Louis Union Trust Company, was \$9,708,758.26, and on this the above-stated profits have been determined. The statement of the St. Louis Union Trust Company does not agree with the records of the Brownsville, which indicate that but \$8,932,080.78 was spent on the property by the syndicate to December 1, 1909. The difference of over \$770,000 appears to represent expenditures made by the syndicate for account of the Houston Belt & Terminal Railway Company, which were liquidated by bonds and interim certificates of that company and should not be confused with expenditures for the Brownsville. This view has been disputed by A. T. Perkins, vice president of the Brownsville, but no evidence has been submitted disproving this fact. The expenditures shown in the records of the Brownsville distribute the \$8,932,080.78, as follows:

Construction, Johnson Bros.....	\$4, 565, 580. 05
Construction, P. M. Johnson.....	990, 807. 62
Advances to St. Louis, Brownsville & Mexico Ry.....	1, 816, 577. 44
Equipment.....	959, 124. 31
Right of way and terminal grounds.....	26, 345. 25
Loans and notes.....	55, 530. 97
Operating expenses.....	41, 804. 66
Supplies and wages.....	76, 546. 51
Interest, commissions, and miscellaneous expenses.....	399, 763. 97
Total.....	8, 932, 080. 78

A valuation was placed upon the property by the Texas railway commission early in 1910, and it granted authority to the Brownsville to issue securities to the extent of \$10,756,000. Under that authority the Brownsville issued \$10,256,000 of its first mortgage 6 per cent bonds dated December 1, 1909, due December 1, 1939, and reduced its capital stock from \$1,221,500 to \$500,000. These securities were taken by the syndicate as the purchase price of the property and \$200,000 in cash, which sum was deposited to the credit of the Brownsville.

An agreement was executed December 1, 1909, between the St. Louis Union Trust Company, acting as manager for the Brownsville syndicate, and the Frisco, wherein the Frisco was to purchase from the syndicate manager the following securities:

	Par value.
St. Louis, Brownsville & Mexico Railway capital stock.....	\$500, 000
St. Louis, Brownsville & Mexico Railway first-mortgage bonds.....	10, 256, 000
62½ shares Houston Belt & Terminal Railway stock.....	6, 250
250 shares Brownsville & Gulf Railway stock.....	25, 000
1,302 shares Rio Grande Railroad stock.....	130, 200
2,500 shares Brownsville & Matamoras stock.....	250, 000
\$44,000 par bonds Rio Grande Railroad.....	44, 000
Total.....	11, 211, 450

The agreed price was \$11,827,200, with interest from December 1, 1909. This transaction was completed on May 26, 1910, by the Frisco paying to the St. Louis Union Trust Company the agreed price of \$11,827,200 and interest of \$295,967.72, a total of \$12,122,897.72. In settlement the Frisco paid \$5,400,000 in cash, executed a note in favor of the St. Louis Union Trust Company for \$2,000,000 due December 1, 1910, and secured the balance of \$4,722,897.72 by depositing with the trust company Frisco-New Orleans, Texas & Mexico division bonds at 90.

In order to pay for part of these securities in cash the Frisco executed an issue of bonds known as the Frisco-New Orleans, Texas & Mexico division bonds, and sold a portion of same. The amount of these bonds authorized was \$50,000,000, secured by the property of the New Orleans, Texas & Mexico Railroad, and the securities of the Beaumont, Sour Lake & Western, the Orange & Northwestern, and the Brownsville Railways. Of this issue \$26,000,000 was authenticated and delivered to the Frisco May 26, 1910, to reimburse it for advances made to and on account of the New Orleans, Texas & Mexico Railroad and its predecessor of approximately a similar amount for construction and the acquisition of the securities of the lines named. The securities purchased with the proceeds of this issue, together with those of the other companies named, were delivered to the trustee under the mortgage as additional security therefor, and were charged to the New Orleans, Texas & Mexico Railroad by the Frisco as advances.

CAPITAL ASSETS AND LIABILITIES.

The total cost of the Brownsville on June 30, 1913, was \$12,701,822.54, of which amount \$1,207,069.65 represented the cost of equipment. This covers 471.8 miles of owned line, and is an average of \$24,353 per mile, excluding equipment, or \$26,910 per mile, including equipment. The amount of stock and bonds outstanding on the same date was \$12,679,105.98, or \$22,716.56 less than the property costs, as shown by the books. The funded debt amounted to \$25,814 per mile.

A comparison of the latter figure with the average of 15 other lines operating in Texas for the year 1912 is as follows:

	Other Texas lines, 1912	St. Louis, Brownsville & Mexico Ry., 1913.
Funded debt.....	\$321,307,914.41	\$12,179,105.98
Mileage owned.....	11,241	471.80
Average per mile.....	\$28,583.57	\$25,814.00
Interest on funded debt.....	\$12,496,198.53	\$706,062.08
Interest per mile.....	\$1,111.66	\$1,496.51

The funded debt per mile of the Brownsville is less than the average of the other Texas lines, while its interest charges are higher than the average of the others to the extent of \$384.85 per mile. This is accounted for by the fact that all of the funded debt of the Brownsville line, excepting \$32,000 of equipment bonds, are 6 per cent mortgage bonds, while the funded debt of the other companies includes nearly \$70,000,000 of issues, principally income bonds, on which no interest is paid.

The total capital liabilities of the Brownsville outstanding on June 30, 1913, were \$12,679,105.98, divided as follows:

Capital stock.....	\$500,000.00
Funded debt.....	12,147,105.98
Equipment trust notes.....	32,000.00
Total.....	12,679,105.98

All of the above securities, excepting the \$32,000 equipment trust notes and \$900 par value of the capital stock which is held for qualifying directors, are owned by the New Orleans, Texas & Mexico Railroad. The \$500,000 capital stock and \$10,256,000 of the mortgage bonds were purchased by the Frisco for account of this company May 26, 1910, from the St. Louis Union Trust Company. The additional issues of mortgage bonds since that date are as follows:

August, 1911, \$502,000 issued to A. T. Perkins in payment for cost of construction of the Port O'Connor branch. These bonds were sold by Perkins on date of issue to the New Orleans, Texas & Mexico Railroad at cost. August, 1911, \$618,000. October, 1912, \$295,541.99. May, 1913, \$171,505. June, 1913, \$306,058.99.

The four latter issues were delivered to the New Orleans, Texas & Mexico Railroad to liquidate notes issued by the Brownsville to that company for advances made by it and for interest on such advances and bonds. In addition to the liabilities described above the Brownsville is indebted to the New Orleans, Texas & Mexico Railroad for similar items to the extent of \$790,529, evidenced by demand notes.

OPERATION.

Considered from the standpoint of income, the operation of the Brownsville appears to have been unprofitable since 1909. Numerous causes are advanced by officials of that company and of the Frisco as being responsible for the unprofitable operation of the property, among which are:

First. Unsettled conditions in the Republic of Mexico, which prevent an interchange of through business with the National Railways of Mexico via Brownsville, Tex., and Matamoras, Mexico.

Second. Failure of crops on the line of the Brownsville.

Third. Lack of refrigerator equipment necessary to move perishable products, consequent damage to shipments, and subsequent payments of loss and damage claims thereon.

Fourth. Glutted market conditions and inability of producers to market their products at a profit, resulting in allowing such products to remain unshipped.

Fifth. One-way loaded-car movement resulting from the transportation of empty stock and refrigerator cars south because of insufficient inbound traffic to provide loaded movement both ways.

Commodity statistics for that line for the year ended June 30, 1912, show the following freight-traffic movement:

	Per cent.
Products of agriculture.....	26.14
Live stock.....	6.67
Other animal products.....	.78
Stone and sand.....	13.38
Other products of mines.....	6.11
Lumber.....	18.12
Other products of forests.....	5.73
Manufactures, merchandise, etc.....	23.07
Total.....	100.00

All of the above causes may have contributed to the unsatisfactory results from the operation of this property, but it would seem that the more important cause of the deficits since 1909 has been the item of interest on capitalization.

Gross earnings have increased from \$207,288.30 for the fiscal year 1905 on an operated mileage of 233.75 miles to \$2,930,691.75 for the fiscal year 1913 on 517.74 miles. The operating ratio has increased during the same period from 54.96 per cent to 79.94 per cent, as follows:

	1905		1913	
	Percent of revenue.	Percent of expenses.	Percent of revenue.	Percent of expenses.
Maintenance of way.....	6.25	11.40	15.80	19.76
Maintenance of equipment.....	6.42	11.67	11.06	13.84
Transportation.....	37.71	68.62	47.19	50.04
Traffic.....	4.57	8.31	2.01	2.51
General.....			3.88	4.86
	54.96	100.00	79.94	100.00

It will be noted that maintenance of way expenses show the larger increase, due to the lack of necessity for extensive maintenance on a new property during the year 1905. Equipment maintenance increased but slightly, and this item includes only one-fourth of 1 per cent for depreciation for the year 1913. Transportation costs and traffic costs increased, although a decrease is shown in the ratio of these two items. A decrease is shown in general expenses.

The net operating income, after deducting expenses and taxes, amounted to \$92,633.05 for 1905 and \$519,585.03 for 1913, while other

income was increased from \$2,946.40 to \$9,961.17, making the total corporate income for 1913 \$529,546.20.

Of this amount \$204,224.54 net was required to pay for hire of equipment, \$26,992.30 being due the Frisco for use of locomotives, \$189,916.56 due the Frisco, other carriers, and private-car lines for use of freight cars, and \$8,639.97 due to Frisco family lines and the Pullman Company for use of passenger cars. The amounts receivable for work equipment and adjustments reduced the amounts payable by \$21,324.29. These charges indicate that the equipment owned by the company is insufficient for its needs. While it is compelled to pay large sums for rent of equipment it may be that the course followed is economical as compared with the interest it would be compelled to pay on the purchase price of equipment necessary for the conduct of its business, of which a large part might be idle at times because of the periodical movement of seasonable commodities.

During the 1913 period rents consumed \$90,104.71 of the corporate income, distributed as follows:

Use of tracks, Texas & Mexican Railway, Robstown to Corpus Christi.....	\$4, 751. 00
Use of tracks, Gulf, Colorado & Santa Fe Railway., Alcoa to Houston.....	10, 486. 73
Use of tracks, Rio Grande Railway., Brownsville to Rio Grande Junction..	257. 17
Use of terminal facilities, Houston Belt & Terminal Railway.....	74, 009. 81
Total.....	90, 104. 71

Interest on \$790,529 demand notes due the New Orleans, Texas & Mexico Railroad required \$56,325.30. The aggregate of these charges and \$570 of miscellaneous rents is \$351,224.55, leaving a balance for interest on funded debt of \$178,321.65.

Interest on the funded debt for the year ended June 30, 1913, amounted to \$706,052.03. Of this \$2,634.17 was interest on equipment trust notes. The balance was on 6 per cent bonds. The interest charge was, therefore, \$1,496.51 per operated mile, while the net revenue was \$1,135.77 per mile. This single fact would make insolvency certain. A receivership would of necessity have come much earlier if the Frisco through the New Orleans, Texas & Mexico Railroad had demanded payment of interest due.

The principal difficulty with this company has been inability to meet the interest on its bonds. Its total capitalization is \$12,670,105.98. Its capital stock is only \$500,000. Its interest-bearing debt is \$12,179,105.98, all of which, excepting \$32,000, bears interest at 6 per cent. The ratio of interest-bearing securities to the total of securities outstanding is 96.06 per cent. This is an excessive ratio, even when compared with the Frisco, which has a ratio of 82.63 per cent. It is apparent that in the sale of this property the St. Louis Union Trust Company took in payment all of the interest-bearing securities of the Brownsville that the laws of the State of Texas per-

mitted the Brownsville to issue. The proportions of capitalization as between stock and bonds on Texas properties is optional with the issuing company, except that at least \$1,000 per mile must be represented by capital stock.

A comparative table of operating results and other statistics of all lines in the United States having gross earnings of more than \$1,000,000 per year, compared with 16 lines operating in Texas and with the Brownsville, and an additional table of statistics applicable to the latter line, follow:

Operating revenues and expenses—Statistics for fiscal year ending June 30, 1913.

Item.	All roads in the United States showing gross earnings of \$1,000,000 or over per annum.		Large roads operating in the Southwest.		St. Louis, Brownsville & Mexico Ry. Co.	
	Total.	Average per mile of line operated.	Total.	Average per mile of line operated.	Total.	Average per mile of line operated.
Freight revenue.....	\$2,134,583,675.86	\$9,626.14	\$63,486,904.00	\$5,043.91	\$1,814,980.65	\$3,505.56
Passenger revenue.....	678,487,867.25	3,059.72	33,896,569.00	2,198.41	916,474.93	1,770.14
Gross operating revenues	3,067,163,762.78	13,786.62	136,062,982.00	8,796.45	2,930,691.75	5,680.55
Total operating expenses	2,118,585,896.52	9,554.00	102,605,320.00	6,633.41	2,342,659.67	4,534.78
Net operating revenues..	938,577,866.26	4,232.62	33,457,655.00	2,163.03	588,032.18	1,135.77
Operating ratio, per cent.	69.30	.....	75.41	.....	79.04	.....
Average mileage operated.....	221,748.58	.....	15,467.95	.....	517.74	.....

St. Louis, Brownsville & Mexico Railway Company statistics, years ending June 30.

	1905	1906	1907	1908	1909	1910	1911	1912	1913
Owned mileage.....	217.55	399.54	399.54	406.69	411.19	443.77	463.91	463.91	471.80
Operated mileage.....	233.76	415.74	415.74	451.23	455.79	494.00	506.85	506.85	517.74
Gross operating revenue.....	\$207,268.30	\$272,896.32	\$414,285.78	\$903,378.63	\$1,315,708.65	\$1,612,214.62	\$1,907,560.74	\$2,399,793.78	\$2,630,691.75
Operating expenses.....	\$113,932.81	\$170,963.53	\$366,572.15	\$646,426.74	\$927,769.23	\$1,250,551.61	\$1,456,772.13	\$1,722,908.62	\$2,342,668.67
Operating ratio.....	54.96	62.55	69.72	71.89	70.31	70.89	76.33	71.79	73.94
Net operating revenue.....	\$93,335.49	\$101,932.79	\$247,713.63	\$253,951.89	\$387,939.42	\$361,663.01	\$447,587.61	\$676,885.16	\$688,023.08
Gross revenue per mile operated.....	\$867.79	\$642.41	\$1,177.57	\$2,401.59	\$2,898.75	\$3,620.01	\$3,741.02	\$4,706.58	\$4,904.55
Operating expenses per mile operated.....	\$487.41	\$411.26	\$882.45	\$1,496.05	\$2,093.52	\$2,832.69	\$2,963.14	\$3,376.94	\$3,844.73
Net operating revenue per mile operated.....	\$380.38	\$231.15	\$295.12	\$905.54	\$805.23	\$787.32	\$777.88	\$1,329.64	\$1,059.82
Total funded debt, including equipment trust obligation.....	\$1,063,000.00	\$1,480,000.00	\$2,569,275.00	\$4,053,425.00	\$5,141,000.00	\$10,351,000.00	\$10,362,868.60	\$11,427,000.00	\$12,179,105.98
Interest on funded debt, including interest on equipment trust obligations.....	\$35,433.33	\$67,050.00	\$110,662.55	\$203,118.80	\$229,641.29	\$470,658.88	\$622,106.27	\$687,685.29	\$706,062.03
Average per mile of road.....	\$151.42	\$167.19	\$277.33	\$505.76	\$558.24	\$1,061.40	\$1,363.41	\$1,363.41	\$1,363.41
Funded debt per mile of road owned.....	\$4,596.23	\$3,704.25	\$6,430.53	\$9,996.96	\$12,502.74	\$23,045.27	\$22,338.10	\$24,631.93	\$25,814.13
Funded debt per mile of road operated.....	\$4,547.59	\$3,569.91	\$6,180.00	\$9,981.86	\$11,279.32	\$20,863.44	\$20,325.32	\$22,412.47	\$23,623.59
Interest on funded debt per mile of road operated.....	\$102.87	\$167.82	\$276.97	\$499.44	\$558.46	\$1,048.77	\$1,341.20	\$1,482.37	\$1,496.51
Ratio of net operating revenue to total funded debt.....	8.78	6.89	9.56	6.27	7.55	3.49	4.32	5.92	4.83
Ratio of interest on funded debt to net operating revenue.....	37.96	65.78	44.73	79.98	59.19	130.25	139.01	101.60	120.07

PROGRESS OF RECEIVERSHIP.

Under an order of the court dated November 17, 1913, the receiver of the Brownsville was authorized to borrow during the year expiring September 15, 1914, not to exceed \$750,000 to be used in the improvement, renewals, repairs, and betterments of the property, and to issue receiver's certificates therefor bearing interest at 6 per cent. He was authorized to immediately issue and sell \$250,000 of these certificates. The balance is to be disposed of only under future orders of the court. Accordingly \$250,000 of such certificates were sold to J. D. O'Keefe, receiver of the New Orleans, Texas & Mexico Railroad, at a price of 98.26 per cent, and the proceeds were placed on deposit in banks to the credit of the receiver of the Brownsville.

The proceeds of this sale have been largely expended for new rails, ties and ballast, but the bills have not been paid. The floods of October considerably damaged the property in the Guadalupe Valley. Repairs had been effected when the floods of December again worked considerable destruction to the line, including the repaired section in the Guadalupe Valley. Excluding the expenditures made necessary by the recent floods, it is estimated that the sum of \$1,196,715 will be required for additions and betterments to the property, including the Victoria branch and the Heyser-Austwell extension, the more important of which are:

Ballast.....	\$500,000	Miscellaneous tracks and build-	
Widening banks.....	50,000	ings.....	\$50,000
Bridges.....	66,000	300,000 ties.....	225,000
20 miles of 80-pound rail.....	100,000		

Cash in the sum of \$243,837.35 has been received by the receiver to November 30 applicable to transactions prior to the receivership, while disbursements during the receivership for indebtedness due prior to July 5 amount to \$507,395.51, consisting principally of traffic balances, pay rolls, and vouchers for the purchase of material. The cash in bank to the credit of the receiver on November 30 approximated \$350,000, which includes the proceeds of the sale of \$250,000 of receiver's certificates. The current and deferred liabilities on October 31, excluding November payments and notes with interest due the New Orleans, Texas & Mexico Railroad, amounted to \$638,471.86, divided as follows:

Traffic balances.....	\$71,510.25	Equipment trust notes.....	\$24,000.00
Audited vouchers.....	488,875.42	Due various.....	5,508.52
Unpaid wages.....	15,852.45	Other deferred items.....	5,327.88
Rentals.....	7,348.81		
Taxes, not due.....	20,048.53	Total	638,471.86

NEW ORLEANS, TEXAS & MEXICO RAILWAY COMPANY.

The New Orleans, Texas & Mexico Railroad Company was incorporated under the laws of the State of Louisiana, May 8, 1905, under the name of the Colorado Southern, New Orleans & Pacific Railroad Company, hereinafter referred to as the Colorado Southern. On March 21, 1910, the stockholders voted to change the name of the company to the New Orleans, Texas & Mexico Railroad Company. The capital stock of the original company was \$5,000,000. On October 18, 1905, a contract was executed between the Colorado Southern and the Gulf Construction Company of Delaware for the construction of a line of railroad from Port Allen to De Quincy, La., and a branch from Sour Lake to Humble, La. The construction work was assigned by the construction company to Kenefick, Hammond & Quigley. An issue of \$12,000,000, 20-year, 4½ per cent bonds dated November 1, 1905, was authorized, \$7,500,000 of which were to be delivered to the Gulf Construction Company from time to time to reimburse it for the construction of the line. Capital stock representing \$5,000,000 was also to be delivered to the Gulf Construction Company January 22, 1906, for executing a trackage contract and for depositing with the trustee certain stocks and bonds of the Beaumont, Sour Lake & Western and the Orange & Northwestern Railroads, which securities apparently had been acquired by it.

An agreement was entered into between the Colorado Southern and the Gulf Construction Company under date of April 14, 1906, canceling the contract of October 18, 1905. Under the new agreement the construction company assigned all of its assets, except its right to the stock, notes, and all money held by it, to the Colorado Southern, which company also assumed the liabilities of the construction company. The Colorado Southern agreed to pay the construction company \$2,200,000 in cash and to release it from all liability under the construction contract, which was now assumed by the Colorado Southern.

The Gulf Construction Company was incorporated under the laws of the State of Delaware October 5, 1905, and was dissolved May 31, 1906. The officers of the company were as follows: President and treasurer, C. W. Hillard; vice president, J. L. Wolcott; secretary, Jno. W. Dixon; assistant secretary and treasurer, W. F. Hull; assistant secretary, F. W. Dubrouillet.

The early history of the construction of the Colorado Southern and its relations with the Gulf Construction Company is not very clear. The president of the Gulf Construction Company was C. W. Hillard, who was also vice president of the Frisco and Chicago & Eastern Illinois Railroad Companies. The secretary and assistant secretary of the construction company, J. W. Dixon and W. F. Hull, respectively, were also officials of the Frisco.

The testimony elicited from Mr. Hillard threw but little light upon the original purpose and the subsequent transactions of the construction company before its dissolution after an existence of about eight months. It obtained from the railroad \$2,200,000 in cash and in return delivered to it \$19,500 in stock of the Beaumont, Sour Lake & Western Railway and \$31,500 in stock of the Orange & Northwestern Railroad, the balance, excepting \$375,000 profit, it is claimed was expended for engineering, surveying, franchises and charter for the railroad company.

It is stated that the Gulf Construction Company was a stock company with \$3,000,000 capital stock fully subscribed, and that the money necessary to conduct its operations was furnished through Blair & Company of New York, and T. Jefferson Coolidge of the Old Colony Trust Company of Boston, Mass. An investment of \$50,000 for account of C. W. Hillard in this company was made by the banking interests involved, and upon the liquidation of the assets of the construction company at its dissolution Hillard received a payment approximating \$5,500 as his proportion of the profits of the enterprise, which are stated to have been \$375,000. B. F. Yoakum was also interested in the construction company to the extent of a subscription of \$250,000, which would make his proportion of the profit \$31,250.

An agreement was executed between the Colorado Southern and A. Kenefick of the subcontracting firm dated August 20, 1905, wherein the Colorado Southern transferred all its rights to control any taxes which might have been or might be voted by any parish, ward, or municipality of Louisiana in aid of the construction of the railroad lines. In return Kenefick was to convey all the necessary right of way, station grounds, and lands required by the railroad company between Port Allen and DeQuincy, La., not including terminals at either place. August 30, 1905, Kenefick assigned his interest in this agreement to B. F. Yoakum, and on March 19, 1906, Yoakum transferred his interest to the Gulf Construction Company, part of same having previously been transferred to one L. S. Berg, to whom the Colorado Southern later agreed to pay 10 per cent of all taxes voted to aid the railroad prior to June 1, 1906, in settlement of his claim under the contract.

An agreement was entered into between the Frisco and the Colorado Southern, dated April 14, 1906, under which the Colorado Southern was to reduce its capital stock from \$12,000,000 to \$2,000,000, and to sell \$1,994,000 of the par value of its capital stock and \$8,500,000 of its first mortgage bonds to the Frisco for \$7,077,000. The bonds were to be dated April 18, 1906, due November 1, 1925, and to bear 4½ per cent interest. The Frisco further agreed to immediately pay \$2,476,950 of this amount as part of the purchase price for \$1,994,000

of the capital stock and \$1,000,000 of the bonds. This money was to be used by the Colorado Southern to discharge all its liabilities or contract obligations for construction, and to purchase stocks and bonds of the Beaumont, Sour Lake & Western and Orange & Northwestern Railroads. From the funds so received from the Frisco the Colorado Southern was to deliver to the construction company \$2,200,000 in settlement of all claims and cancellation of contracts. In order to obtain the funds necessary to conduct this financing the Frisco issued a series of five-year 5 per cent notes dated January 1, 1906, aggregating \$7,500,000, which were sold to Blair & Company at 94.36, the cash proceeds amounting to \$7,077,000.

The Frisco assumed active control of this property early in 1907, through the election of A. J. Davidson as president and under a lease dated April 30, 1907, leasing the property to the Frisco for 999 years. The property was separately operated for account of the Colorado Southern. The lease was subsequently canceled.

Prior to March 1, 1910, advances were made by the Frisco to and for account of the Colorado Southern amounting to \$25,827,677.49. In return for such advances as were made direct to that company notes were, in some instances, executed in favor of the Frisco. Cash was advanced by the Frisco from the sale of \$7,500,000 of Frisco notes, which were liquidated by stocks and bonds hereinbefore described. These advances were for construction purposes and to furnish funds to finance extension and construction work on the Beaumont, Sour Lake & Western Railway and the Orange & Northwestern Railroad, and to acquire the securities of the St. Louis, Brownsville & Mexico Railway. The advances to the former two companies were funded by them through the issuance of their securities to the Colorado Southern.

A summary of such advances to March, 1910, follows:

Advances for construction, etc.....	\$4, 954, 854. 53
Less cash payments.....	501, 060. 28
	<hr/>
	4, 453, 794. 25
Interest on Colorado Southern, New Orleans & Pacific notes.....	466, 980. 65
Advances to acquire bonds of Beaumont, Sour Lake & Western and Orange & Northwestern.....	574, 354. 87
Interest on Colorado Southern, New Orleans & Pacific bonds, Sept. 1, 1909, to Mar. 1, 1910	191, 250. 00
Advances to redeem equipment trust series "A," with interest.....	518, 400. 00
Frisco 5-year 4½ per cent notes issued to place funds in the hands of Colorado Southern, New Orleans & Pacific Railroad.....	7, 500, 000. 00
Payment to St. Louis Union Trust Company for account of the Colorado Southern, New Orleans & Pacific Railroad, to acquire stock and bonds of St. Louis, Brownsville & Mexico Railway.....	12, 122, 897. 72
	<hr/>
	25, 827, 677. 49

In order to reimburse itself for these advances the Frisco, on May 17, 1910, authorized an issue of bonds of \$50,000,000, dated March 1, 1910, known as the Frisco-New Orleans, Texas & Mexico Division first mortgage 30-year bonds. These bonds are a Frisco liability and are a direct lien on the New Orleans, Texas & Mexico Railroad, and an indirect lien on the St. Louis, Brownsville & Mexico Railway, the Beaumont, Sour Lake & Western Railway, and the Orange & Northwestern Railroad, the stocks and bonds of these companies having been acquired and deposited with the trustee as collateral security under this mortgage. Of these bonds \$26,000,000 were authenticated and delivered to the Frisco in reimbursement for advances made by it to the Colorado Southern.

Subsequent advances, evidenced by notes of the New Orleans, Texas & Mexico Railroad, were made by the Frisco to the New Orleans, Texas & Mexico Railroad, the successor of the Colorado Southern, which aggregated on May 31, 1913, \$6,587,074.74. These advances represented interest on the New Orleans, Texas & Mexico Railroad bonds paid by the Frisco for account of the New Orleans, Texas & Mexico Railroad, cash for the current needs of the latter company, and interest on its notes. Cash payments of \$289,296.30, and Frisco-New Orleans, Texas & Mexico bonds amounting to \$2,068,593.35, were applied to payment of this indebtedness, leaving a balance of \$4,229,185.09 due the Frisco on May 31, 1913.

Additional advances were made to the New Orleans, Texas & Mexico Railroad by the Frisco exceeding \$1,000,000. A portion of this debt was liquidated by cash payments and bonds, but the balance of it remaining unliquidated on May 31, 1913, was \$657,304.41.

Since the present series of mortgage bonds of the New Orleans, Texas & Mexico Railroad was issued interest thereon has been paid by the Frisco approximating to March, 1913, the last interest period on which the interest was paid, \$4,000,000. A portion of this sum was liquidated by notes which were subsequently liquidated in part by additional bonds.

It is thus seen that the Frisco has advanced to and on account of the south Texas lines more than \$33,000,000, of which amount there is still due \$4,229,185.09 on notes and \$657,304.41 that is not covered by notes, a total of \$4,886,489.50. About \$28,582,000 of this indebtedness was liquidated by the Frisco issue of New Orleans, Texas & Mexico Railroad bonds, all of which, excepting \$450,000, were sold at prices of 90 and 91, resulting in discounts and commissions of \$3,130,650. If the notes and accounts are not paid the loss on this account will total more than \$8,000,000.

The New Orleans, Texas & Mexico Railroad appears to have been used as a distributor of funds advanced by the Frisco. On May 31, 1913, the New Orleans, Texas & Mexico Railroad carried in bills

receivable due from the St. Louis, Brownsville & Mexico Railway, the Beaumont, Sour Lake & Western Railway, and the Orange & Northwestern Railroad, \$1,988,182.61, representing that portion of the advances made by it to those companies which had not been liquidated by stocks and bonds of the debtor companies. Additional notes of those companies amounting to \$887,373.96 were cancelled in June, 1911, by charging the amount to the cost of the stock of those companies.

The New Orleans, Texas & Mexico Railroad consists of a main line from De Quincy to Anchorage, La., 137.47 miles; a branch from Eunice to Crowley, La., 22.37 miles; a branch from Erwinsville to Mix, La., 12.88 miles; trackage rights from Anchorage to New Orleans over the lines of the Yazoo & Mississippi Valley Railway and the New Orleans Terminal Company, approximately 94½ miles; and trackage rights from De Quincy, La., to the Texas State line, 18½ miles, over the Kansas City, Shreveport & Gulf Railway via which line a connection is made at Beaumont with the Beaumont, Sour Lake & Western Railway. The total operated mileage for the period ended May 31, 1913, was 285.87 miles.

The capitalization of this company on May 31, 1913, consisted of \$2,000,000 of capital stock, \$28,582,930.01 of (Frisco issue) mortgage bonds, all of which were issued by the Frisco to itself but are a lien on the property of the New Orleans, Texas & Mexico Railroad, and \$1,887,561.70 equipment trust bonds, a total of \$32,470,491.71. In addition to this it owed the Frisco notes and accounts aggregating \$4,886,489.50. The capital assets at the same period amounted to \$32,946,816.96, divided as follows:

Cost of road.....	\$11,544,792.21
Cost of equipment.....	3,903,425.93
Cost of stocks owned.....	2,583,354.58
Cost of bonds owned.....	14,915,244.24
Total.....	32,946,816.96

The operation of the New Orleans, Texas & Mexico Railroad for the past four years to May 31, 1913, shows a deficit for each year as follows:

1910.....	\$427,928.89
1911.....	369,417.03
1912.....	502,982.73
1913, to May 31.....	314,284.37

The deficit in the profit and loss account for the years 1910 and 1911, amounting to \$751,590.03, representing the operating deficit with certain adjustments applied thereto, was charged to the cost of property. The operating loss for 1912 and 1913 to May 31 amounted to \$817,267.10.

A receiver for the New Orleans, Texas & Mexico Railroad was appointed July 5, 1913, in the person of Mr. J. D. O'Keefe of New Orleans, La., on the petition of the New York Trust Company, trustee under the Frisco-New Orleans, Texas & Mexico Division mortgage.

Upon taking possession of the property the receiver found it necessary to spend a considerable sum to liquidate current rental obligations, make necessary improvements, and provide adequate facilities with which to handle the traffic offered. To provide the funds required for this purpose the court authorized an issue of \$2,000,000 one-year receivers' certificates bearing interest at the rate of 6 per cent, this amount representing the needs of the properties to October 15, 1914. Certificates for \$850,000 were sold at a discount of 2 per cent and interest and the proceeds were appropriated as follows:

Matured equipment trust notes and interest.....	\$194, 356. 07
Rental due July 1, 1913, with interest, for use of Yazoo & Mississippi Valley R. R. tracks.....	70, 403. 18
Rental due July 1, 1913, with interest, for use of Illinois Central R. R. tracks.....	3, 054. 03
Rental due July 1, 1913, with interest, for use of property New Orleans Terminal Company.....	33, 824. 15
Improvements on lines of N. O., T. & M. R. R.....	165, 109. 72
Advances to receiver St. L., B. & M. Ry.....	245, 656. 40
Advances to receiver B., S. L. & W. Ry.....	122, 828. 20
Total	835 231. 75

The amounts advanced to the receiver of the St. Louis, Brownsville & Mexico Railway and the Beaumont, Sour Lake & Western Railway were based upon proof of the immediate needs of the receiver of these companies and not upon their ultimate requirements. Receivers' certificates were issued in both instances to the receiver of the New Orleans, Texas & Mexico Railroad, the advance representing 98.26 per cent of par.

Cash applying on transactions prior to the receivership in the sum of \$213,981.89 has been paid to the receiver, of which \$193,686.02 has been disbursed. These receipts and disbursements apply primarily to traffic balances. Earnings from the operation of the property since the date of the receivership have been used to defray expenses of operation, any excess funds being on deposit in various banks.

OTHER SOUTH TEXAS LINES.

In addition to the holdings of the Frisco in the New Orleans, Texas & Mexico Railroad, it also holds, through the medium of that company, control of the Beaumont, Sour Lake & Western Railway, the Orange & Northwestern Railroad, and the St. Louis, Brownsville

& Mexico Railway companies. These lines, in connection with trackage rights over various lines enumerated below, form a through line between New Orleans, La., and Mexico via Brownsville, Tex. The mileage of the through line is divided as follows:

Name of company.	Miles owned.	Trackage.	Total operated.
Beaumont, Sour Lake & Western Ry.....	84.29	34.05	118.34
Orange & Northwestern Railroad.....	61.55	1.12	62.67
St. Louis, Brownsville & Mexico Ry.....	471.80	45.94	517.74
Total.....	617.64	81.11	698.75
Mileage operated by the New Orleans, Texas & Mexico makes an aggregate mileage of the south Texas lines.....	172.72	113.15	285.87
	790.36	194.26	984.62

The trackage rights are over the following roads:

	Miles.
Yazoo & Mississippi Valley Railway and New Orleans Terminal Company:	
Anchorage to New Orleans, La.....	94.50
Kansas City, Shreveport & Gulf and Texas & Fort Smith Railways: De Quincy, La., to Beaumont, Tex.....	46.54
Gulf, Colorado & Santa Fe Railway: Algoa, Tex., to a point near Houston, Tex.....	24.32
Houston Belt & Terminal Railway at Houston.....	10.53
Total through-line trackage.....	175.89

The outstanding securities of the Beaumont, Sour Lake & Western Railway and the Orange & Northwestern Railroad on May 31, 1913, were as follows:

Name of company.	Stock.	Bonds.
Beaumont, Sour Lake & Western Ry.....	\$35,000	\$2,007,260.74
Orange & Northwestern R. R.....	35,000	1,066,946.51

All of the stock of the above-named companies except qualifying directors' shares, and all of the bonds, are owned by the New Orleans, Texas & Mexico Railroad, in addition to which the two companies are indebted to the New Orleans, Texas & Mexico Railroad to the extent of nearly \$2,000,000, representing bills payable issued for advances and interest. Like the other Frisco properties in south Texas and Louisiana these lines have been operated at a loss, the deficits for the year 1912 being as follows:

Name of company.	Deficit, 1912.
Beaumont, Sour Lake & Western Ry.....	\$185,834.98
Orange & Northwestern R. R.....	107,213.82
Total.....	293,048.75

The gross operating revenues per mile of road and the average revenues per ton-mile of the companies named for the fiscal year ended June 30, 1912, were:

Name of company.	Revenue per mile.	Revenue per ton-mile.
Beaumont, Sour Lake & Western Ry.....	\$6,041.55	\$0.01009
Orange & Northwestern R. R.....	2,239.52	.01567

These two properties are in the hands of Receiver Frank Andrews.

NORTH TEXAS LINES.

Through direct ownership of securities the Frisco controls the properties of the north Texas lines, composed of the Paris & Great Northern Railroad, the St. Louis, San Francisco & Texas Railway, the Fort Worth & Rio Grande Railway, and the Brownwood North & South Railway. The affairs of these properties are administered by W. C. Nixon, president of the first-named company, and Avery Turner and G. H. Schleyer, receivers for the last three named companies. The combined operated mileage of the properties is 513.4 miles, divided as follows:

Name of company.	Miles owned.	Track-age.	Total mileage operated.
Paris & Great Northern R. R.....	16.94	.....	16.94
St. Louis, San Francisco & Texas Ry.....	85.32	158.27	243.59
Fort Worth & Rio Grande Ry.....	223.44	11.78	235.22
Brownwood North & South Ry.....	17.65	.....	17.65
Total.....	343.35	170.05	513.40

The outstanding securities on May 31, 1913, were as follows:

Name of company.	Stock.	Bonds.
Paris & Great Northern R. R.....	\$500,000	\$332,000
St. Louis, San Francisco & Texas Ry.....	804,000	1,188,000
Fort Worth & Rio Grande Ry.....	2,928,300	4,467,000
Brownwood North & South Ry.....	225,000	91,000

With the exception of the Paris & Great Northern Railroad the operation of these companies has not been profitable, as is evidenced by the deficits for the year 1912 and the total deficits carried in the surplus accounts:

Name of company	Income deficit 1912.	Total deficit to June 30, 1912.
Paris & Great Northern R. R.....	¹ \$105,814.13	¹ \$404,895.30
St. Louis, San Francisco & Texas Ry.....	271,815.12	1,559,085.21
Fort Worth & Rio Grande Ry.....	204,512.66	¹ 348,837.25
Brownwood North & South Ry.....	3,045.24	3,045.24

¹ Surplus.

The principal deficit of these companies is that of the St. Louis, San Francisco & Texas Railway. The results of operation of that company for the past six years show the following deficits:

Year.	Deficit.	Year.	Deficit.
1908.....	\$152,239.12	1912.....	\$271,815.12
1909.....	186,245.92	1913.....	173,548.84
1910.....	300,382.28		
1911.....	409,771.82	Total 6 years.....	1,494,003.10

Among the fixed charges against the income of the St. Louis, San Francisco & Texas Railway Company are those of rentals of trackage from the Chicago, Rock Island & Gulf Railway, the Gulf, Colorado & Santa Fe Railway, and the Houston & Texas Central Railroad, aggregating 158.18 miles.

The Frisco has been called upon from time to time to assist this company financially, and this has been done by permitting the St. Louis, San Francisco & Texas Railway Company to retain freight traffic balances due the Frisco. From March, 1908, to February, 1910, accumulated freight traffic balances due the Frisco from this company amounted to \$1,276,758.20. This amount was reduced from time to time by drafts of the Frisco upon the St. Louis, San Francisco & Texas Railway, when the funds of that company would permit, to the extent of \$208,599.51, leaving a balance of \$1,068,158.69. On March 1, 1910, the St. Louis, San Francisco & Texas Railway Company issued to the Frisco its demand note for \$1,142,318.69 to cover the nonliquidated traffic balances and for notes with interest aggregating \$74,160, which were paid for it by the Frisco. Since the issuance of this note additional freight traffic balances due to the Frisco amounting to \$1,053,852.92 have accumulated to May 27, 1913, and are unpaid. The results from operation of the Texas company afford but little promise that the Frisco can collect these amounts.

The following are the gross operating revenues per mile of road and the average revenues per ton-mile of the companies named for the fiscal year ended June 30, 1912:

Name of company.	Revenue per mile.	Revenue per ton-mile.
Paris & Great Northern R. R.....	\$14,702.68	\$0.01911
St. Louis, San Francisco & Texas Ry.....	5,354.29	.01299
Fort Worth & Rio Grande Ry.....	3,815.17	.01904
Brownwood North & South Ry.....	353.57	.07787

APPENDIX.

SENATE RESOLUTIONS.

RESOLUTION IN THE SENATE OF THE UNITED STATES, JUNE 10, 1913.

Resolved, That the Interstate Commerce Commission investigate, if it has not the evidence on hand, and report to the Senate all the facts and circumstances concerning the purchase of the Chicago & Eastern Illinois Railroad by the St. Louis & San Francisco Railroad Company, and the subsequent receivership of both railroads, such information to contain the amount paid per share for both common and preferred stock of the Chicago & Eastern Illinois Railroad by the St. Louis & San Francisco Railroad Company; the time of the issuance of such stock and the amount thereof; guaranties, if any, made with reference thereto; amount of bonds issued by the St. Louis & San Francisco Railroad Company at the time of the purchase of the said Chicago & Eastern Illinois Railroad; the location of the holders of said bonds; the amount of the same held in this country and abroad; and all the facts and circumstances involved in any way in the transactions between said railroad companies; and all the facts and circumstances leading up to said receiverships, and the progress of said receiverships to date; also the names and the capitalization and bond issues of all railroad and bridge companies controlled by said St. Louis & San Francisco Railroad Company; the time of such acquisitions, how acquired, amount of bonds issued at the time of such acquisition, and all facts or circumstances involved in such purchase or control.

RESOLUTION IN THE SENATE OF THE UNITED STATES, JULY 2, 1913.

Resolved, That the Interstate Commerce Commission, in connection with its investigation of all the facts and circumstances concerning the purchase of the Chicago & Eastern Illinois Railroad by the St. Louis & San Francisco Railroad Company and the subsequent receivership of both railroads, as heretofore ordered by resolution of the Senate, also investigate, if it has not the evidence on hand, and report to the Senate all the facts and circumstances concerning the purchase of the St. Louis, Brownsville & Mexico Railroad in the State of Texas by the St. Louis & San Francisco Railroad Company,

such information to contain the total cost, directly and indirectly, of the purchase of said St. Louis, Brownsville & Mexico Railroad by the St. Louis & San Francisco Railroad and the method by which same was acquired and the person or persons to whom the purchase price thereof was paid, or who directly or indirectly participated in such sale or were benefited thereby, including the total cost of construction of the St. Louis, Brownsville & Mexico Railroad and the total amount and value of donations or bonuses contributed in cash or otherwise in consideration of or as an inducement to the construction of said road, the amount paid to all persons, firms, or corporations in consideration of the construction of said railroad, or any part thereof, and the names of any and all persons who were interested in contracts for such construction or who participated in or were benefited by such contracts, directly or indirectly, and any and all other facts tending to show what profit was derived, directly or indirectly, by any and all persons from the construction, operation, or sale of the said St. Louis, Brownsville & Mexico Railroad, and by whom derived, and whether, since the construction of said railroad, its operation has been profitable or unprofitable, and if unprofitable, the reasons therefor.

29 I. C. C.

INDUSTRIAL RAILWAYS CASE.
IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROADS SERVING INDUSTRIES.

Submitted February 28, 1913. Decided January 20, 1914.

1. Upon the evidence and testimony adduced of record herein, it is *Held*, That the service by line carriers in official classification territory beyond a reasonably convenient point of interchange, between their rails and the tracks of industries, is a shippers' service, a part of the industrial operations of the plant, and not a service of transportation; and that the performance of such services by the line carriers without charge in addition to the rate, and the allowances paid by them therefor to industries, or their plant railways, for performing the service for themselves, are unlawful rebates, in fact and in effect, and give undue and unreasonable preferences and advantages to the industries so favored and work undue and unreasonable prejudice and disadvantage to shippers in the same line of business who do not receive any such allowances or the benefit of any such services.
2. Upon the evidence and testimony adduced of record herein, it is further *Held*, That the admission of industrial lines to the benefit of the modified per diem agreement results in many cases in a substantial addition to their revenues that accrues directly to the benefit of the industry and is an undue, unreasonable, and unlawful preference and advantage to the industry.
3. It is further *Held*, That the delivery of a car by a line carrier upon the interchange track is a delivery to the industry itself, and that the elimination of demurrage, under the present practices of the line carriers, as a transportation charge against industries with plant railways claiming to be common carriers, results in undue, unreasonable, and unlawful preferences and advantages to such industries and works an undue, unreasonable, and unlawful prejudice and disadvantage to shippers not enjoying the benefit of such arrangements.

James W. Carmalt and *Edward E. Gann* for the Interstate Commerce Commission.

George Stuart Patterson and *H. A. Taylor* for central freight association and trunk line carriers.

Clyde Brown for New York Central lines.

William B. Linn and *William Ainsworth Parker* for Baltimore & Ohio Railroad system.

C. A. Severance, *J. H. Reed*, and *Charles MacVeagh* for Union Railroad, Newburgh & South Shore Railway Company, Lake Terminal Railway, Elwood, Anderson & LaPelle Railroad, Benwood & Wheeling Connecting Railroad, McKeesport Connecting Railroad, Etna & Montrose Railway, Lucy Furnaces Railroad, Pittsburgh & Ohio Valley Railroad, St. Clair Terminal Railroad, and Pencoyd & Philadelphia Railroad.

Strong & Cadwalader and Rogers, Locke & Babcock for South Buffalo Railway Company.

George C. Wilson and D. T. Watson for Monongahela Connecting Railroad Company.

R. W. Barrett, for Lehigh Valley Railroad Company.

A. H. Wintersteen for Baltimore & Sparrows Point Railroad Company.

Cravath, Henderson & DeGersdorff for Philadelphia, Bethlehem & New England Railroad Company, and Bethlehem Steel Company.

Frederick C. Slee, A. C. Dustin, Clement B. Wood, W. F. Morris, jr., B. F. Grant, Owen S. Cecil, H. S. Endsley, P. M. Bell, W. P. Worth, Squire, Sanders & Dempsey, Andrew R. Sheriff, and James P. Whilla for various industries and industrial railways.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This is a proceeding to determine the legality of the allowances paid by public carriers, east of the Mississippi River, to industries on their rails that own and operate plant railways in connection with their industrial establishments. The allowances are made to the industries or to their subsidiary railways in the form of (a) divisions out of the rate, (b) per diem reclaims, (c) remission of demurrage, and (d) furnace allowances. These various benefits and privileges will be explained later in this report. Involved with that question is the related and equally important question of the legality of the services performed by the line carriers, without charge in addition to the rate, in spotting cars in and about industrial plants that have no locomotives of their own or that have their own locomotives but nevertheless look to the line carriers to switch their traffic to and from any point in the plant in accordance with the demands of the industry. The character and extent of this service will be described later in this report.

The allowances so paid and the free services so performed involve in the aggregate an immense expenditure for which the carriers must necessarily be reimbursed through the rates exacted on the traffic of the general public; at the same time, it must be noted, the allowances and free services so paid and performed by the carriers relieve the particular industries of a large burden of expense which the industries themselves would otherwise have to meet as a part of their manufacturing cost. This operates as a discrimination against the smaller competitors of the favored concerns because, in the nature of things, the benefit of such allowances and free services can be enjoyed only by the larger industrial establishments with plant railways.

The importance of the case can not easily be overstated. It is important to the commercial and industrial enterprises now enjoying

these special advantages at the hands of the carriers, because of the large and direct financial aid and benefit to the industries resulting from the allowances and free services. It is of no less concern to other large manufacturing and industrial companies which, while similarly situated, are not at the moment so favored by the carriers, but are putting themselves in form to claim these concessions from them in the near future. It is equally important to the great mass of shippers, who neither receive the allowances or free services nor are in a position to claim them, but who, in the open markets, must nevertheless meet the competition of industries so favored and are put by these practices at a commercial disadvantage that is obvious and sometimes very acute. - Finally, the matter is of far-reaching consequence to the public, for upon the general public rests the burden of contributing sufficient revenues to the carriers to enable them to meet their expenditures, including those incurred on behalf of the industries so favored, and in addition to earn an adequate return upon the property so devoted to the service of the public.

DEPLETION OF RAILROAD REVENUES.

The exact amount of the loss to the carriers resulting from such allowances and free services does not appear upon the record, but the evidence establishes the fact that the depletion of their revenues through these practices is very great. The amount paid in allowances and reclaims is large; and the services rendered free by the line carriers to a relatively few favored industries would, if charged for on a reasonable basis, increase the revenues of the carriers by many millions annually. The practical immunity from demurrage charges, enjoyed by these industries in consequence of these practices, is also a very substantial item.

Allowances.—During the year ending June 30, 1912, the Pennsylvania Railroad paid \$1,019,910.41 in divisions out of the rate to only 10 such industrial railways connected with steel plants; the New York Central's western lines paid to 12 such industrial railways an aggregate of \$660,057.93; the Baltimore & Ohio paid to 13 such industrial railways the sum of \$530,317.06. Five of these industrial railways received from the several lines the additional amount of \$1,059,274 in per diem reclaims. Just how much demurrage these arrangements enabled these industries to avoid is not shown, but the loss in car-service revenues to the carriers must have been very material.

In many of the cases before us on this record the cash revenues received by these plant railways out of the rates of the line carriers are sufficient to lift from the industries the entire cost of their operation. In the instances where the income is said not to be suffi-

cient to do this no account has been taken of the profit to the industry of the elimination of demurrage as a transportation charge against it. When carefully analyzed it is thought that in the majority of cases the industry is under no burden of cost for operating its plant railroad even for its purely interworks switching. And in many instances the plant railway enjoys revenues that are sufficient not only to relieve the industry of the cost of its operation but to enable the plant railway company, besides laying up a substantial surplus, to declare large dividends on its stock held by the industry. In the case of the Baltimore & Sparrows Point Railroad Company, the plant railroad of the Maryland Steel Company, the annual dividends on its stock during the last eleven years have aggregated more than 423 per cent and have ranged from 20 to 55 per cent a year.

Free services.—During the year ending June 30, 1911, the railroads performed for a single steel industry, the Republic Iron & Steel Company, at Youngstown, Ohio, free spotting services on 75,134 cars at a cost to the railroads of \$104,329.62, or \$1.40 per car. That industry, as a facility in its industrial operations, maintains a system of standard-gauge tracks aggregating between 35 and 40 miles, all located in and around its plant. With these the rails of several railroads connect; and instead of the railroads' transportation service ending where the plant tracks begin, the railroads without additional compensation deliver and spot the inbound loaded cars at such points within the plant inclosure as the steel company requests; and in the same manner they also spot the empty cars for loading. In such cases the superintendent or yardmaster of the industry usually has control of the switching and spotting operations on the plant tracks, although the locomotives and crews are furnished by the railroads and are paid for by them.

The service thus performed by the carrier at large industries where the tracks are owned by the industry and the motive power and crews are supplied by the carrier is described by a competent witness as follows:

For inbound material to be delivered at the plant the carrier with its own power first identifies, assorts, and assembles the cars in its own time; it then takes the various kinds of material, the coal, ore, limestone, etc., and groups them, because it is known by the carrier just the different deliveries required for these materials. The cars are then switched to the point of placement and spotted into the unloading position, even to the extent of pushing them up on the high trestles and spotting them over the doors of the bins. The subsequent gathering up of the empty cars, assorting them out, and getting them back into the carrier's yard is done by the carrier with its own power and at its own convenience. The employees of the industry do the loading or unloading, but the entire movement over the industrial tracks is performed with the power of the carrier.

These allowances paid to and free services performed for large industrial establishments obviously relieve them, as heretofore stated, of a heavy burden of expense which the industries themselves would otherwise have to meet as a part of their manufacturing cost; and that manufacturing expense is now borne by the carriers. The amount of the expense was accurately ascertained of record at only a few plants; but the industrial concerns for which such free service is rendered are numerous. On the Pennsylvania lines, east, there are 233 such plants with more or less extensive system of private tracks within their plant yards on which the line carrier, without charge, now performs the service of spotting empty and loaded cars in and around the plant.

Some idea of the aggregate depletion of the revenues of the carriers, as the result of the allowances, reclaims, free services, and loss of demurrage growing out of these practices in the territory covered by the inquiry, may be had from the above figures, showing the extent of the financial benefits enjoyed in that way by a small proportion of the industrial plants in that territory. The total effect upon the carriers' revenues is obviously a matter of many million dollars a year.

THE JUSTIFICATION.

The record amply demonstrates that these allowances and free services were never taken into consideration in fixing the rate but in effect are concessions from the rate. They have grown up as the direct result of competition among the carriers for the traffic, or, to express the thought more accurately, they are an example of the special concessions and rebates in service that shippers with a large traffic are able to wring from the carriers in consideration of being permitted to handle the traffic or share with other lines in its carriage.

Nevertheless, the allowances actually paid to these industries, or their subsidiary railways, are here sought to be justified by those receiving them on the theory that the industries in handling their own traffic into and out of the plant with their own power, and, as their own convenience may require, are performing a part of the carrier's proper service of transportation for which the industries may be compensated by the line carrier out of the rate. The free services are sought to be justified on the theory that the transportation service of the line carrier properly extends into a plant and to and from each separate building and point within it that is reached by the plant rails.

FUNDAMENTAL PROBLEMS INVOLVED.

The problems arising out of these practices are so presented on the record as to require us to dispose of them upon fundamental grounds.

In other words, the privileges and advantages of this character, now enjoyed by a relatively small number of more or less extensive industrial establishments, must either be held to be an unlawful concession to them by the carriers or, if lawful, the principles upon which they may be justified must be ascertained and clearly defined so that like privileges and advantages may be claimed, as of right, by all industrial establishments served by these carriers, whether they be large or small. The allowances and free services to which we refer very materially increase the operating expenses of the carriers, are a heavy drain upon their earnings, and as heretofore stated must be provided for out of their general revenues. It follows, therefore, upon a large view of the record, that the real question before us is whether the particular industries, which these plant railways serve and by which or in the interest of which they are owned, are themselves to bear the burden of operating them, or whether the allowances and free services which the line carriers now pay to and perform for these industries, a class of shippers that necessarily must always be relatively small in number, are to remain a burden the cost of which may be spread by the carriers through their rates over the traffic of the entire public. If the allowances and free services may on any ground be justified and found to be lawful, they will on like grounds be claimed by and must in the near future be extended to all industries similarly situated. We are therefore at the parting of the ways with respect to this very heavy tax upon transportation. Many other industries not now enjoying such allowances are only awaiting our approval of them here before claiming like favors from the carriers as of right; and it is certain that if these practices are now found to be lawful the announcement of our conclusions will at once be followed by preparations on the part of similar industries throughout the country to throw upon the carriers the cost of operating their plant railways. Such a ruling now not improbably would fix this relation between the line carriers and the more or less extensive industries of the country as a permanent practice, the burden of which must be borne through increased rates by the general shipping public.

RELATION OF THESE PRACTICES TO RATE INCREASES.

Indeed, the very carriers that are augmenting their expense accounts and dissipating their revenues in this manner, to the extent of many millions of dollars a year and for the benefit of a comparatively few shippers, are now complaining that their present earnings are insufficient and, on that ground, have asked our permission to make a substantial increase in their general rate schedules. In that sense the proposed increase in rates has a certain very definite and immediate relation to this proceeding. In this general connection it

may safely be assumed that no substantial part of the well informed and reflecting public would deny to the owners of the railroads of the country a reasonable return on their investments; nevertheless, before they may fairly ask the general public to share further in carrying their burdens, it is manifest that the railroads must themselves properly conserve their sources of revenue by making every service rendered by them contribute reasonably to their earnings. This having been done, the Commission upon an adequate showing of the need of additional revenues will not shrink from the responsibility of sanctioning such measures, including even a general increase in rates, as may be required to bring reasonable prosperity to railroads, so far as this may be accomplished under rates and charges that are reasonably just alike to shippers and to the carriers. Aside from the right of the owners of the property so devoted to the use of the public to receive from the public a reasonable return on their investments, it is of profound importance to the public in its own interest to accord fair and equal treatment to the owners of railroads, for upon no other basis may we continue to look to private capital for the further development and extension of our railroad facilities. The general public interest is therefore advanced in a very direct way by the reasonable success of railroad investments under rate schedules that reasonably respect the rights of shippers. But if further burdens through an increased scale of rates may justly be imposed on the general public, all must agree that unlawful concessions, rebates, and preferences in the interest of a small proportion of the shipping public ought to be eliminated from the practices of carriers. It is therefore appropriate, as it is also our duty on general grounds, to examine carefully into the legality of the allowances, free services, per diem, and demurrage concessions, of the character disclosed on the record before us, by means of which the revenues of the carriers are so heavily taxed and their net earnings so largely impaired; and we now take up the consideration of that question with a full appreciation of its far-reaching importance.

SCOPE OF THE INQUIRY.

The order instituting the proceeding embraces all industries with plant railways east of the Mississippi River. The investigation, however, has been confined for the present to iron and steel industries in that territory. But before stating the facts relating to the various plants described of record, it is proper to say that the whole matter was voluntarily brought to our attention by certain of these industries and the line carriers that serve them. The demands of plant railways for larger allowances, the increasing number of industries that were incorporating railroad companies to take over the opera-

tion of their plant tracks and locomotives with a view to demanding allowances, and the growing volume of complaint against the discriminations arising out of these relations between the line carriers and the industries so favored, together with certain formal and informal rulings by the Commission in other cases, had combined to raise a doubt on the part of the carriers and the industries as to the legality of these allowances and free services. These apprehensions led in 1909 to an extended investigation of the matter by the line carriers and the steel interests. Committees were appointed and detailed information gathered as to the character of the industrial railways of iron and steel plants then enjoying allowances from the line carriers, and as to the nature of their operations, their relation to the controlling industries, and the amount of the allowances being made to them. But the same influence that led the carriers originally to make such allowances, namely, the immense traffic, both inbound and outbound, of the iron and steel industries in this territory, undoubtedly made it impossible for the committees to reach an agreement. The matter was thereupon turned over to the legal departments of the line carriers and the industries, in order, as it was said, to divest the problem of these traffic influences, and new committees were appointed to carry on further investigations. It is our understanding that the general conclusion reached, as the result of a series of conferences between them, was that allowances to industrial railroads were illegal where no real service of transportation was performed. The committees thereupon undertook to determine what industrial railroads connected with iron and steel industries in this territory were, to use the language of counsel, real railroads. In the spring of 1911 these committees laid the matter before the Commission in the form of a stipulation between the United States Steel Corporation on the one hand and the line carriers on the other, accompanied by recommendations that allowances might lawfully be continued to six designated industrial railroads serving iron and steel industries in the territory in question, and that allowances to the others might lawfully be discontinued. There were certain minor matters about which the committees could not agree, but the whole situation was submitted to us with the statement that both parties in interest would abide by the findings of the Commission, subject only to the privilege of review by the courts in the event that our order invaded any vested right. Upon the presentation of the stipulation and recommendations protest was made by other steel and iron interests having plant railways to which, under the recommendations embodied in the stipulation, allowances were not thereafter to be made; protests were also made by industries with plant railroads to which allow-

ances had not theretofore been made but which were preparing to assert their right to have allowances. It was apparent, therefore, that the whole situation would have to be taken in hand by the Commission and that a more extended record than the stipulation and recommendations would be necessary before any order dealing with these matters could fairly be entered. Disregarding the stipulation and recommendations, this general investigation was thereupon instituted by the Commission on its own initiative. It includes all short lines of railroads serving industries of any kind in official classification territory, but the record thus far made, with one or two exceptions, is confined, as just stated, to the plant railways of iron and steel industries east of Chicago. It is shown of record, however, that the practice of incorporating plant railroads, and through them of receiving allowances from the trunk lines out of the rate, extends to all branches of industry in that territory where the tonnage to be shipped is large.

CHARACTER OF INDUSTRIAL RAILWAYS.

It would unduly extend this report to undertake here to describe each of the iron and steel industries and their plant railways as the facts in relation to each are spread of record. For convenience of reference this has been done in an appendix attached to the report. There are, however, certain features that are characteristic of all these plants. The ordinary plant consists usually of blast furnaces, steel mills, rolling mills, and other manufacturing departments. It covers from 25 to 125 or more acres of land, in many cases inclosed by fences and gates. One of the important problems that each plant must meet in its own way is the disposition of slag and other refuse that accumulate in large quantities from the operation of the furnaces and mills. A convenient dumping ground must be provided, and this, partially at least, is the explanation of the location of the plant in practically every instance either on a river bank or lake shore, where the submerged lands may be filled up to the established harbor lines, or on or adjoining lowlands or gullies where the refuse may be conveniently dumped. In practically every instance plant rails and locomotives are provided as a means for disposing of these waste materials, and a surprising amount of low or submerged lands have in that way been brought up to grade and made available for the extension of the plants themselves or for use by other industries. Some of these made lands are of great value. The plants, however, have various other and still more important uses for rails and locomotives, and it is repeatedly admitted of record, and abundantly illustrated in the case of all these plants, that locomotives and a system of rails in and about an iron

and steel plant are a necessary facility in the industry. The plant tracks ordinarily are used not only for the movement of cars between the rails of the line carriers and various points within the plant, but they are required for the prompt and economical movement of material between its various departments. In some cases they are operated as a bureau or department of the industrial company; but at this time in the majority of instances they are operated by an incorporated railroad company owned by the industry. In many cases the industrial railroad performs only the interchange switching with the line carriers, while the industry, with other power, does the interwork switching itself and not through its plant railway company. In other instances the incorporated industrial railroad performs all the switching within the plant as well as the switching to and from the rails of the line carriers. In addition to the standard-gauge spur and switch tracks in and about these plants all the larger iron and steel industries maintain a system of narrow-gauge tracks operated with their own power and confined exclusively to mill work. In all cases there is a practical identity in the ownership of the plant railway and the plant.

In the case of some of the plants the industrial railroad company owns no physical property, but formally leases its right of way, tracks, and equipment from the industry by which it is itself owned; in other cases the industrial railroad company owns the equipment and leases the tracks and right of way from the industry; and in still other cases the right of way has been deeded to the industrial railroad company in fee, and the tracks and equipment have been assigned to it. At the majority of the iron and steel plants described of record the rights of way of the line carriers adjoin the property line of the industry, and in such cases the interchange of cars with the plant could readily be performed by the line carrier by means of a short switch track. In a few cases only is the plant located at a distance from a line carrier; in such cases the industrial railroad usually extends its rails to the trunk line; and the extraordinary financial results accruing to the industry, in the way of divisions and allowances, as a consequence of such an arrangement, are fully shown of record. At a number of plants the tracks of two trunk lines parallel and adjoin the property of the industry and each of them formerly extended its switch tracks to a junction with the plant tracks either just within or just outside the plant inclosure. When the plant tracks were taken over by the incorporated plant railroad the tracks of the latter were extended around the plant in such manner as to exclude the trunk lines from direct access to the plant except over the rails of the newly incorporated industrial railroad. The result is an apparent intermediate service by the industrial railroad between the plant and

the line carrier, on the basis of which the plant railroad exacts compensation, not from the industry, but out of the rate of the line carrier. In several instances the right of way of a trunk line originally ran directly through the plant inclosure, and when the incorporated industrial railroad assumed the operation of the plant tracks the trunk line tracks were removed and relocated at a point outside the plant inclosure. These arrangements were usually accomplished by an exchange of property, the trunk line deeding its old right of way to the industry, or to its plant railway, in return for a deed of its new right of way acquired for the purpose by the industry. While the ostensible object of these transactions was to give the industry more room for the location of its mills and buildings, often the real purpose, and in all cases the actual result, was to give the industry a better opportunity to interpose its plant railway between its plant and the trunk line, so that the industrial railroad could have an apparent basis for allowances. The cost of relocating the trunk line is usually included in the capital account of the industrial railroad.

RELOCATION OF TRUNK LINE TRACKS AT INDUSTRIES.

In 1900 the Erie Railroad tracks, for example, ran through the center of what is now known as the Newburgh Steel Works yard. With the growth and expansion of that plant it was thought necessary to move the tracks of the Erie Railroad to a new location about 350 feet outside the plant. The expense of moving these tracks, including the purchase of a new right of way, was about \$500,000. This was paid by the American Steel & Wire Company, a subsidiary of the steel corporation, which owns the plant. The transaction is referred to on the record as the beginning of the construction of the Newburgh & South Shore as a railroad, the industrial line of the wire company at these works.

In the case of the McKeesport Connecting Railroad, the industrial line of the National Tube Compny, also a subsidiary of the steel corporation, the record shows that the Pennsylvania Railroad originally crossed the plant premises diagonally to a point about 250 feet east of Armstrong street, and ran thence along the river bank to the De Wees Wood plant (see appendix, p. 349). At that time the river bank was of irregular shape. Permission was received from the government to fill in and put the river bank in good alignment, and in that way the tube company acquired the property. The Pennsylvania tracks were then relocated at a point south of the plant and away from the river. The tracks were removed to the new location at the expense of the tube company.

In the case of the St. Clair Terminal Railroad, the industrial railway of the plant of the Carnegie Steel Company at Clairton, Pa.,

also a subsidiary of the steel corporation, the record shows that the Pennsylvania Railroad originally extended 150 feet nearer the river than at present and interfered with the ore stock yard of the plant. The tracks were removed to a new location, in 1902 or 1903, at the steel company's expense and the original right of way of the trunk line was conveyed to the steel company.

Another and still more striking example of the influence of large industrial operations in shaping the policy of the line carriers may be found in the case of the large plant of the United States Steel Corporation at Gary, in the state of Indiana:

The Chicago, Lake Shore & Eastern Railway was originally a plant railway of the Illinois Steel Company at South Chicago, but both the plant and the railway later became the property of the steel corporation. Subsequently, when the steel corporation commenced the building of a new plant at Gary, designed to be one of the largest in the world, the tracks of this industrial railway were extended to connect the plant at South Chicago with the new plant at Gary, and all the yard tracks and sidings located in and around the various buildings and departments at Gary were constructed in the name of the Chicago, Lake Shore & Eastern Railway Company. As a site for the new plant the steel company had purchased a large area of land near Lake Michigan and adjoining the Illinois-Indiana state line; but the entire lake frontage at this point was then occupied by the four-track, stone-ballasted main line of the Lake Shore & Michigan Southern Railway, and the double-track, stone-ballasted main line of the Baltimore & Ohio Railroad extended directly through the center of what is now the Gary plant. Prior to the commencement of the work of building the plant the officers of the steel corporation held a conference with the executives of those lines, at which it was agreed that if the two carriers would convey the eight miles of the lake front to the steel corporation the latter would provide them with other rights of way and build new tracks of the same type and turn them over to the two lines fully completed and without cost to them. The result of these negotiations was that all the existing tracks of both lines were moved away and the steel corporation took possession of the valuable frontage on the lake, eight miles long, putting in the necessary docks for handling its ore and other materials. The expense of these changes, as we are advised, approximated \$7,000,000; it was borne by the steel corporation by capitalizing the amount in the cost of the Chicago, Lake Shore & Eastern Railway Company. The arrangement not only provided an extensive area of land for the plant of the steel corporation, but it excluded the line carriers from access to the plant and gave full control of the rail facilities to and within the plant to the plant railway. The

tracks of the plant railway within the plant aggregate about 114 miles, and its operations became so enormous that it was thought to be inadvisable, as we understand the matter, to continue to maintain the allowances to the plant railway as an industrial railroad, and thereupon all its tracks were leased to the Elgin, Joliet & Eastern Railway, which is also entirely owned by the steel corporation. Thereafter, in order to give a semblance of legality to the liberal divisions accorded by the line carriers on traffic to and from the plant, the numerous mills, warehouses, and other points of loading and unloading within the plant were treated as local stations of the Elgin, Joliet & Eastern Railway.

The Gary plant of the steel corporation was not examined in this proceeding, but a special investigation of the property was made, and the facts here stated are taken from the report of the examiner who conducted it.

In these and other cases the result of these arrangements has been to detach the trunk line from immediate connection with the plant and to give the plant railway, as stated, an apparent basis for allowances, with all the attendant privileges of value to the industry.

A PLANT RAILWAY AN INDUSTRIAL NECESSITY.

The modern steel plant covers a large area, and every provision must be made to reduce the manufacturing cost and to provide against the loss of efficiency. The most important facility in accomplishing this is the plant railway, by which, in addition to the inbound movement of ore, coke, and limestone, is secured the prompt distribution of material and supplies from points of storage to the various departments. Slag, ashes, and other waste materials must be quickly removed and taken to the dumping grounds provided for that purpose, as heretofore explained. All this is manifestly a part of the manufacturing process and is no more related to transportation than it would be if done by horse and wagon. In other words, a plant railway is as necessary a part of the plant equipment as is the plant smokestack, and, as before stated, this is one of the facts completely established on the record.

The record makes it clear also that the successful operation of a blast furnace requires a continuous movement of ore, coke, and limestone to be ready at the precise time and in the proper proportions to meet the requirements of the furnaces. The absolute necessity of this regularity of service at the furnace is repeatedly referred to on the record. Nevertheless it is contended, that when these raw materials are brought in by the line carriers, in the proportions and at the time required by the industry, this is not a feature of the industrial processes of the plant, but is a service of transportation which the

line carriers must perform or pay the industry out of the rate for performing with its own facilities. In many cases the tracks on which these deliveries of coke, ore, and limestone into the furnace bins are made are elevated on trestles adjoining the furnaces. At perhaps most of the plants here described hot metal from the furnaces is moved to other departments of the plant on the narrow-gauge tracks, but in some cases this is done entirely by the standard-gauge plant railway. In most instances the movement of partially manufactured products from one mill to another is very extensive, and a large part of this interworks service is ordinarily done by the plant railway.

Some of these iron and steel industries were originally small concerns with a spur track holding only a few cars. Their growth, however, has been rapid, and with it has followed an increase in the number of buildings and departments and in the extent of land occupied. This involved also an increase both in the extent and in the number of spurs and switch tracks in the plant. As heretofore stated, there is usually also a narrow-gauge system of tracks in the mills and connecting the different mills. There are cranes and other appliances scattered about the works. All this makes a situation so complex that the trunk lines that have undertaken to do the switching, both within the plant and to and from it, have found it necessary to have one control, and one of them ordinarily does the work, the expense being pooled and divided among them all. This is the case where the plant itself provides the tracks but does not undertake to operate them. In most of the cases described of record, however, the plants have altogether excluded the trunk lines from their plant rails and do all the work with their own power. So great is the complexity at many plants as to make it practically impossible for any outside power to undertake the work. This was made clear by several witnesses. An official of one of the largest plants in the country, after explaining the great cost of operating its very extensive plant railway asked why his company did not permit the trunk lines to do the work there as they do at some other plants. He explained that his company would prefer to bear the expense itself rather than to try such an experiment. Nevertheless, in a number of smaller plants east of the Pittsburgh district the trunk lines do all the work inside the plant as well as to and from it.

DELIVERY OF CARLOAD FREIGHT.

Under the common law as construed in the practically unanimous decisions of the courts, a delivery of carload freight to a shipper having a private siding is made by shunting the car upon the switch, clear of the main tracks. All services upon the siding beyond that

point, in placing the car for loading or unloading at a particular spot convenient to the shipper, are what may be called volunteered services in the sense that they are in addition to the main-line haul and in excess of any obligation of service by the carrier at common law. Nevertheless the custom of making deliveries at the warehouse or factory door on private sidings is one of long standing in this country, and under certain language in the act it is possible that the carriers may be required, upon reasonable compensation, to do this spotting, as it is called. We find no authority, however, English or American, that holds or intimates that the line carrier, in connection with the main-line haul, is under any obligation to spot a car at the factory door on a private siding except upon reasonable compensation included in the rate itself or set up in the form of a special charge.

These private sidetracks or sidings, as they are more commonly called, are constructed to facilitate the receipt and delivery of car-load freight. They either connect a particular warehouse, factory, or elevator with the main line of the carrier, or, in the case of an industry having plant tracks of its own, they connect the main line of the carrier with a point of interchange with the plant tracks. Ordinarily the private siding is a short track to a coal or lumber yard, or to a factory, warehouse, or elevator adjoining the right of way of the line carrier and having a door or platform where the car may conveniently be loaded or unloaded. In England a car shunted by the carrier upon a siding is spotted by the industry, this being accomplished ordinarily by means of a winch and cable. But in this country, although it is often done with a pinch bar or other appliances, the heavy modern equipment makes it much more convenient to spot a car at a factory door with a locomotive, and the line carriers quite generally perform the service. Although the practice is not absolutely uniform throughout the country, the spotting is customarily done without any charge in addition to the published rate. It is, however, a special and particular service of peculiarly direct value to the shipper in that it not only secures prompt delivery to him, but enables him to avoid the expense of cartage, which in many cases would be very substantial. Such a service when included in the rate gives the shipper a very obvious advantage over a shipper who at the same rate must accept and deliver his traffic on a public team track and cart it to and from his factory or place of business; and the shippers who labor under this disadvantage far outnumber the other class of shippers. Whether under such circumstances a special charge, in addition to the line rate, should be exacted for spotting a car on a private siding of the usual and ordinary kind—that is to say, one leading to an elevator or to a door or unloading platform of a factory or warehouse—is undoubtedly a question that should and necessarily must have most careful con-

sideration. That, however, together with free store-door delivery, ferry car, and other free services by which, at the cost of the carriers, the relatively few shippers of large traffic are relieved from the expense of cartage, is a question that can not appropriately be disposed of finally in this case; and the spotting of cars without charge at the doors of factories or warehouses on private sidetracks has been referred to here in order that we may have the benefit of the contrast of that service with the very much more extensive service performed by the line carriers without additional charge for the larger industries that have, and require in their industrial operations, a more or less extensive system of tracks in and about their plants. We get an even more significant view of the matter when we contrast the ordinary switching service, without charge in addition to the line rate, on a switching track leading to a door or loading platform at a factory or warehouse, with the allowances and divisions surrendered by the line carriers out of the same rates to other large industries having, as an industrial necessity, an intricate system of tracks within their plants which they operate directly with their own power or indirectly through an incorporated railroad company owned by the industry. Throughout the territory under consideration here the same rate that is exacted for a public team-track delivery, with the cartage charge which it entails upon the shipper, will give another shipper the service of spotting the car at his warehouse on a siding, without attendant cartage expense; it will also purchase for an industry the service of spotting the car at any point within its plant, or entitle it to allowances for doing this for itself. The resulting inequality in the value of the service rendered, as between these different classes of shippers, is very striking; and the very great additional cost to the carrier in performing the plant service is equally apparent.

PUBLIC SERVICES OF INDUSTRIAL RAILWAYS.

One or two of these plant railways operate passenger cars for the convenience of their own employees going to and from their work, and incidentally carry a small number of passengers not connected with the industry. The remaining industrial roads described of record have no passenger traffic and have no opportunity to serve the public in that way. None of them carries mail or express; only one issues bills of lading, and but one of them has a depot for less-than-carload shipments and that was constructed during the progress of the hearing. Although much is said of record about terminal roads, not one of these industrial short lines is in any sense a terminal railroad as that phrase is ordinarily used. The road that has most nearly the appearance of a terminal road claims only three per cent of outside traffic. Moreover, the record shows that, generally speaking, outside busi-

ness is not solicited but on the contrary is discouraged. In the great majority of instances there is no real outside traffic. Where any such traffic exists it is almost negligible, except in three or four cases. According to their own figures the outside traffic varies from one-quarter of one per cent to a maximum of 12.66 per cent in the case of the South Buffalo Railroad. The three or four instances where it is really appreciable will be specially considered.

The legality of allowances to plant railways of this character was considered from a somewhat different point of view in *General Electric Company v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237. There the complainant, conducting a great industry with an extensive system of plant rails and locomotives of its own, asked for an order requiring the defendant carriers to make it an allowance out of the rate for operating its plant railway in the movement of its own traffic to and from various parts of its plant. It appeared that in 1886 there were, on the site in question, two factory buildings connected with the main line of the carriers by a switch track over which the carriers were accustomed to deliver carload freight without extra charge, the less-than-carload freight being hauled from their freight stations to the plant by the industry with its own horses and wagons. In 1908, when the case was before us, the business had so expanded that the complainant's plant embraced an inclosed area of 180 acres upon which there were 140 buildings of varying size, including 50 or 60 shops, foundries, and warehouses, in which about 17,000 men were ordinarily employed. Within the inclosure were 12 miles of standard-gauge track, in addition to 7 miles of narrow-gauge track, all of which the industry was operating with its own power. At a point of interchange between the line carriers and the plant railway, namely, on certain storage tracks just within the plant inclosure, the complainant during that fiscal year had delivered to the line carriers about 25,000 loaded and empty cars, and at the same point of interchange it had received about the same number of inbound loaded and empty cars. The service of the line carriers did not extend beyond the storage tracks. From that point the inbound loaded and empty cars were moved by the industry to the various loading and unloading points within the plant; the outbound cars, loaded at various points within the plant, and the outbound empty cars were also delivered at that point to the line carriers by the plant railway. For all this service on its own traffic between the interchange tracks and the various points of loading and unloading within the plant the complainant contended that it was entitled, under section 15 of the act, to be reasonably compensated by the line carriers out of the rate. The contention was based on the theory that the complainant was doing a service of transportation and furnishing facilities of transportation with

respect to its own traffic which the line carriers would have to perform and furnish under the published rate if the complainant chose not to perform and furnish the service and facilities for itself. We held, however, that the service beyond the interchange tracks was not a carrier's service, or a part of the transportation undertaken by the carriers, but was a shipper's service—a service apart from transportation that was performed by the shipper for its own benefit on tracks and with facilities within the plant inclosure that were laid and used for the complainant's own convenience and as necessary facilities in the conduct of its manufacturing operations. We also held that a carrier, when serving industrial plants of that character, performs its full duty under its contract of transportation when it delivers or accepts cars at some reasonably convenient interchange point, such as the storage tracks provided for the purpose by the complainant within the plant inclosure. We further held that the line carriers are under no duty to extend their transportation obligations with the extension of great industrial plants, like that of the complainant, and could not lawfully be called upon, as a part of the service of transportation, to make deliveries through a network of interior switching tracks, constructed as plant facilities to meet the necessities of the industry; and that their obligation as common carriers involves only a delivery and acceptance of carload shipments at a reasonably convenient point of interchange between their main line and the plant tracks of the industry. We, therefore, dismissed the complaint upon a finding that the complainant performed no service for itself within its plant which it could lawfully call upon the line carriers to perform for it, and that there was, therefore, no basis for its demand for compensation from the line carriers out of the rate. The same general question was involved and the same conclusions announced in *Solvay Process Co. v. D. L. & W. R. R. Co.*, 14 I. C. C., 246; *Crane Iron Works v. C. R. R. Co. of N. J.*, 17 I. C. C., 514; and in later cases.

The Commerce Court in passing upon the Commission's order in *Crane Iron Works v. United States*, 209 Fed., 238, said:

In the operation of this plant it is necessary to transport loaded cars received by rail to various points within the limits of the plant for unloading, to transport cars which have been loaded with its product from various points within the plant to the line of railway by which they are taken to destination, and also to some extent necessary to move cars from point to point within the plant itself. * * * Upon all the circumstances connected with the location, construction, and operation of the Crane Railroad, the Commission found as an ultimate fact that, as to the Crane Iron Works, it was a mere plant facility, performing services which the iron works should perform for itself if it desired such services, and that the Central Railroad was under no obligations to pay the Crane Railroad for the switching service which it performs for the iron works, and indeed could not lawfully do so. We see no reason to doubt

the correctness of this conclusion. The Commission had previously pointed out the distinction between those operations which constitute a plant facility and the legitimate services of a common carrier (*General Electric Co. v. N. Y. C. & H. R. R. Co. et al.*, 14 I. C. C. Rep., 237; *Solvay Process Co. v. D., L. & W. R. R. Co.*, 14 I. C. C. Rep., 246), and the observations made in these illustrative cases seem to us to express a sound and wholesome principle.

It will be observed in the cases cited that the line carriers were declining to perform any service within the plant beyond the interchange point, and we held that no service beyond that point could lawfully be required of them and, therefore, that they could not be required to make an allowance to the industries for doing the service for themselves with their own facilities. The attitude of the carriers before us here is just the reverse. Under the compulsion of the large traffic of these steel and iron plants the line carriers have been forced by the industries to extend their service beyond the interchange tracks and, without charge in addition to the rate, they are either doing the very service within the plants which, in the cases cited, we said the defendant carriers could not be required to do, or they are paying the industries allowances for doing the service within their plants for themselves with their own facilities. They are volunteering a service in excess of their legal obligation of service and are receiving no compensation for it. And the question here is whether this may lawfully continue; that is to say, whether the line carriers may continue without additional charge to perform the very extensive switching service beyond the interchange point and to and from all points within the plant inclosures of industries that have no locomotives, and of industries that have locomotives but prefer to have the line carriers do the work; and whether they may lawfully continue to pay allowances out of the rates to other industries which, with their own facilities, perform the switching service beyond the interchange tracks and to and from all points within their plants.

UNDUE DISCRIMINATIONS INEVITABLE.

That these practices result in undue preferences and unjust discriminations is fully shown by the record. We regard them also as unlawful in and of themselves. Indeed, the surprising feature in the situation is that they have been permitted to continue so long. That they have grown out of competitive conditions between the line carriers was not only admitted at the hearing but is abundantly demonstrated by the testimony. In the case of 20 incorporated roads described of record, 16 receive allowances and four do not. Of the 10 unincorporated plant railways, three receive allowances and seven do not. Of these seven industries the interchange switching in two instances is performed by the connecting trunk lines under a

pooling arrangement, the cost being divided between them on a car basis; at one of them the interchange and the interworks switching is performed by the industry and the cost divided between it and the trunk lines on a car basis. At the other four of these seven industries the entire service is performed by the industry without allowances of any character. These differences in treatment are not the result of different conditions at the plants but grow out of the competition among the carriers for the traffic. In the same district no allowance is paid to one plant railway, a small allowance is made to another, while a large allowance is paid to a third. When asked to explain the payment of allowances to some industries and not to others similarly situated, a witness for one of the line carriers said it had never differentiated between them on principle but only as the result "of competition and the force of circumstances * * *. I do not think we have ever made one of these allowances willingly and voluntarily." The lack of uniformity is also shown in that in some cases the trunk lines make no allowances beyond the so-called furnace allowances, while in other cases allowances are made by them on both inbound and outbound shipments ranging from \$1 to \$2.50 per car. In one case they are fixed at \$2.50 per car on inbound material and \$4 a car on the outbound manufactured products. Upon the whole record it may be taken as fully established that the allowances are not regarded as having any relation to the rate or, as heretofore stated, as having been taken into consideration in fixing the rate; they are simply concessions out of the rate to secure the traffic. This is no less true of the free service of the trunk lines in participating in the manufacturing process by arranging in many cases, as heretofore explained, to switch the cars of raw material into the plant, not in accordance with their own convenience but in such manner as to meet the requirements of the furnaces. And in the history of the industry it has occurred not infrequently that the failure of the line carrier to do this properly has resulted in closing down the mill. It is partly to avoid this risk that the larger industries as a rule prefer to do the switching with their own facilities, and have the trunk lines pay for it with allowances.

PER DIEM RECLAIMS.

The depletion and loss in the revenues of the line carriers, through this voluntary and preferential contribution in money and services to a relatively few industries, has already been adverted to, but it is more extensive than has been generally understood. The payments made to large shippers by the trunk line carriers east of Chicago, in the form of allowances to their industrial or plant railroads, aggregate many millions of dollars a year. A large

additional amount is also annually contributed by the line carriers to the same industries through the so-called per diem reclaims.

In order to have a clear idea of the practice of carriers in the matter of per diem charges and of the important privileges resulting from it to these iron and steel industries, it is necessary to understand the modified agreement, which is the basis upon which the line carriers settle with switching roads for the detention of their equipment. The ordinary switching or terminal line, when a party to the per diem agreement, is under an expense of 45 cents a day for each car of a trunk line held upon its rails. Usually such lines have no equipment of their own upon which they in turn may earn revenues from the trunk lines. In order, therefore, that the per diem charge may not unduly deplete the revenues of the switching lines, the latter under the modified agreement are entitled to make a reclaim against their immediate trunk-line connections for a stipulated number of days, the period, as contemplated and intended under the practice, being based upon the actual experience of the respective switching lines in the necessary detention of cars on their rails. The periods agreed upon with the industrial lines before us range from three and one-half days in the case of one plant railway to a maximum of five and one-half days, and appear in some cases to be substantially in excess of their reasonable necessities. During the period so designated for a given industrial line it is required to pay, to the trunk line owning the car, a per diem charge for the number of days the car is actually on its rails; but, under its right to make reclaim for the whole period upon its immediate trunk-line connection, the industrial line makes a profit of 45 cents per day for each day saved out of the designated reclaim period by the prompt return of the car. The industrial lines that have been given the benefit of the modified agreement are not only practically relieved of the payment of per diem charges but, through these arrangements, many of them receive a substantial addition to their revenues, which accrues to the benefit of the controlling industry.

In the iron and steel industry this charge or per diem reclaim in many instances has become the source of large revenues to the plant railways and to the industries that own them. Of the 30 industrial railroads, parties to this proceeding, 10 are parties to the per diem agreement. It is shown of record that for the year ending June 30, 1911, the aggregate amount of per diem reclaims received by only five of these roads amounted to \$1,059,273.99. The full results of the arrangement ought to be clearly appreciated. It means that instead of the 48 hours of free time accorded to ordinary shippers, these industries have from three and one-half to five and one-half days of free time, the possession of the car by their plant railway not being

charged against the industry. Moreover, when the car is returned to the line carrier in less than these periods the industry earns a bonus or reclaim, which in the case of one of these industries aggregates more than \$600,000 a year, out of which the clear profit must necessarily be very substantial; the bonus in nearly all cases is large, and in many cases a profit results. Just how much demurrage these industries escape from paying to the line carriers, on the fiction that a car in the possession of their industrial or plant railroad, and ordinarily inside their own plant, is not in their own possession, and therefore not subject to demurrage, is a matter of conjecture; but undoubtedly the results flowing from it give to that fiction a very large annual money value to each of these industries. Even when such an industry detains a car beyond the maximum period of time allowed to its plant railway under the per diem agreement, and a demurrage charge results, the industry pays it not to the line carrier, but to its industrial railroad and therefore into its own treasury. As to those industries, demurrage is therefore entirely eliminated as a transportation charge. Competing industries, on the other hand, that have no such advantages must pay demurrage to the line carrier for the detention of all cars beyond the 48 hours of free time allowed in the tariffs, and they have the benefit of no per diem reclaim. Since these facts were developed in the course of this investigation, these matters have been the subject of conferences among the line carriers and with these industries; and we are advised that an understanding has been reached as the result of which per diem reclaims, after January 1, 1914, will no longer be a source of revenue to the industries. They are, however, still to enjoy immunity from demurrage.

SWITCHING AND SPOTTING.

In addition to the cash revenues lost by the line carriers through reclaims and the complete elimination of demurrage as a transportation charge against such industries, there is the gratuitous switching service performed by the line carriers in many large plants which have installed extensive spur and switch tracks in and about their mills and other buildings for necessary industrial purposes, and yet look to the line carriers to extend their rates to every door and other point within the plant, regardless of its size or the intricacy of the plant tracks or the cost of the service; and to do their inbound and outbound switching without charge, and even to do their interworks switching, in some cases without profit. It is impossible to estimate the aggregate cost to the line carriers of this free service in the territory east of the Mississippi River, but the amount is very large and its reasonable value to the shippers for whom it is performed must amount to many millions of dollars a year.

In short, we are here dealing with preferences and discriminations on a huge scale and with services rendered by the line carriers which, if charged for on a reasonable basis, would increase their revenues by millions of dollars annually. The conditions on the Pennsylvania lines east of Pittsburgh will alone be sufficiently illustrative. It has 4,200 private siding connections, of which 3,800 are of the simpler form with a capacity of a few cars each. On these sidings the spotting is done without any charge in addition to the line rate. On its various main and branch lines there are about 400 more or less complicated systems of tracks within plants. At 233 of these industries the line carrier, entirely without charge in addition to the rate, and notwithstanding the fact that it is under no such obligation, performs the service of spotting empty and loaded cars in and around the plant; at 145 the spotting is done with the power of the industry, and at 24 the service is performed partly by the industry and partly by the carrier. Of the 145 plants in which the industry does the work with its own power a majority have not incorporated their plant railways. Where the plant tracks and locomotives are incorporated, the line carrier delivers the inbound cars and takes the outbound cars at designated interchange tracks within the plant or just outside. One railroad witness of much experience testified that the line carriers had accepted the incorporation of a plant railway as notice to them to keep out of the plant.

INCORPORATING PLANT RAILWAYS.

Little importance is attached by the line carriers to the incorporation of a plant railway, and we attach no importance to it under the law as it now stands. The Lucy Furnace of the Carnegie Steel Company, the Upson Nut Company, and several other iron and steel industries described of record receive allowances, although no formal action has been taken by them to give their plant railway the status of a common carrier through incorporation. But nearly all the industrial roads in this proceeding receiving allowances are incorporated. The Bethlehem Steel Company, which has a very modern plant and competes actively in the general markets for iron and steel products, has 50 or 60 miles of standard gauge tracks within its plant, but it has never received allowances from the line carriers. Recently it has incorporated about $1\frac{1}{2}$ miles of track outside of the plant inclosure under the name of the Philadelphia, Bethlehem & New England Railway. It is not asserted that the service over this short track differs in any degree from the work done over it before the charter was secured from the state authorities; but that course was followed, as it is said, at the suggestion of the carriers serving the Bethlehem Steel Company and for the avowed purpose of secur-

ing allowances from them. The Cambria Steel Company incorporated its plant tracks under the name of the Cambria Terminal Railroad Company, and having exercised the right of eminent domain to secure property that it had failed to acquire as the result of private negotiations, the charter was surrendered. The plant tracks are now operated as a department of the industry. The function of the plant railway and its work for the industry and its real relation to it has remained the same at all times.

THE PRACTICE IN ENGLAND AND ELSEWHERE.

It may be useful at this point to refer to the practice of English railways with respect to the switching service preceding or following the transportation service required under the rate. Under the English law the term "conveyance" is defined as the conveyance by regular trains and such service incidental thereto as can be performed by the locomotive and crew of the train. The "rate" covers all service incidental to the conveyance of freight, including the picking up and delivering at any railway company's terminal or public station, or at any sidetrack at which delivery can be made directly from the train without unreasonable delay. On business to or from a private siding or railroad the only extra service included in the rate is the handling of cars to or from an interchange track at the junction; any subsequent movements of cars in connection with industrial operations must be performed by or at the expense of the shipper or consignee. If a switching service is necessary between a private siding and the carrier's terminal at the originating point or destination, such service is not "incidental to conveyance," but is classed as an extra service, for which a separate charge may be made by the railway company performing the service. The extra service, for which a railway company may charge in addition to the rate for conveyance, being clearly defined by law or regulation, it naturally follows that no allowance or other form of rate reduction may legally be made to the shipper or consignee for performing any extra service for itself with its own facilities. In other words, there can be no reduction of a conveyance rate in compensation for a service which the railway company is under no obligation to perform. The service of the line carrier is confined to its own rails and delivery is made, as at common law, just clear of its right of way. Any service to an industry beyond that point is performed by the industry itself or at its expense. This we understand to be the practice also of the state railroads of Germany. There a sign is not infrequently erected at a point clear of the main track to indicate where the industrial track begins. The rate includes the placement of the car on the siding just clear of the main track. Any movement beyond the designated point of re-

ceipt and delivery of the car must be performed by or at the expense of the shipper or consignee.

Our transportation methods have developed on somewhat different lines and this is not the time, perhaps, for a wholesale and radical readjustment of them. Although our own act seems to contemplate a separation of the line rate from the terminal charges and many advantages would flow from that course, the change would involve some difficulties. But the record before us makes it entirely clear that we may to advantage adopt some of the wiser and more equitable practices elsewhere. It is conceded on all sides, and the record fully establishes the fact, that many discriminations and other inequalities grow out of these relations between the line carriers and certain industries which to a large extent would be eliminated by the observance on the part of the line carriers of the distinctions that have been drawn in such cases between a carrier's service and a shipper's service. In any event, a rate that is reasonable for the team-track and siding service is clearly less than reasonable when it includes the much more costly service over tracks leading to a multitude of loading and unloading points within an industrial plant. Besides identifying, assorting, and assembling cars for plant delivery, and in many cases grouping the coke, ore, and limestone for placement in accordance with the requirements of the manufacturing processes, even to the extent of pushing the cars up on high trestles and spotting them at the receiving bins of the furnace, as heretofore stated, the line carrier must place the cars as required over a network of plant rails concededly necessary as facilities in the economic conduct of the plant; and it must subsequently gather up the empties and get them back into its own yards. At many of these plants the trunk lines keep special locomotives and crews in order to do this work in the manner required by the industries. Surely the same rate can not stand as a proper rate for such a service and at the same time stand as a reasonable rate for the team-track and siding service. Either the plant rate is too low or the team-track and siding rate is too high and is burdened, along with the general rates of the public, with the cost of the plant service.

In submitting the matter to us, as heretofore explained, it was conceded that none of these plant railways mentioned in the stipulation were "real railroads," except in the six cases hereinafter described. Aside, however, from the stipulation of the parties, we find and conclude on the facts of record that in the case of the Pittsburg Steel Company, Bethlehem Steel Company, Cambria Steel Company, Republic Iron & Steel Company, Youngstown Sheet & Tube Company, Wickwire Brothers, Wheeling Steel & Iron Company, Upson Nut Company; Philadelphia, Bethlehem & New England Railroad Company, controlled by the Bethlehem Steel Com-

pany; Valley Connecting Railroad Company, controlled by the Stewart Iron Company; Leetonia & Cherry Valley Railroad Company controlled by the United Iron & Steel Company; Cuyahoga Valley Railroad Company, controlled by the Cleveland Furnace Company; Pittsburgh, Allegheny & McKees Rocks Railroad Company, controlled by the Pressed Steel Car Company; River Terminal Railway Company, controlled by Corrigan-McKinney & Company; Lake Erie Terminal Railroad Company, controlled by the Camp Conduit Company; North Buffalo Railroad Company, controlled by the Wickwire Steel Company; and the Lucy Furnace, Benwood & Wheeling Connecting Railway Company, Etna & Montrose Railroad Company, Pittsburgh & Ohio Valley Railroad Company, Elwood, Anderson & Lapelle Railroad Company, McKeesport Connecting Railroad Company, St. Clair Terminal Railroad Company, and Pencoyd & Philadelphia Railroad Company, controlled by the United States Steel Corporation or by one of its subsidiary companies, all the service by the line carriers beyond a reasonably convenient point of interchange between the rails of the carrier and the rails of the industry, either within or without the plant, is a shipper's service and not a service of transportation which the line carrier may perform without charge or may allow for out of the rate through divisions or otherwise when performed by the industry or by its industrial railroad, and that the facilities used by the industry in performing the service, whether separately incorporated or not, are plant facilities and plant equipment. We also conclude and find that the delivery of a car by a line carrier upon the exchange track is a delivery to the industry, and that the elimination of demurrage, under the present practices, as a transportation charge against the industry is unlawful and gives the industry so favored an undue and unreasonable preference and advantage. We further find and conclude that undue and unlawful preferences and discriminations arise out of the present practice of the line carriers in performing such services without additional charge and in making allowances therefor out of the rate when performed by the industry or by its plant railway. We further find and conclude upon the record that the line carriers are not compensated for such services in their rates and that the allowances therefor out of the rates are unlawful rebates paid for the traffic, and when performed by the line carriers are unlawful rebates, in service, paid for a like purpose. Although tariffs have been published since the hearing under which the immediate connections of the Philadelphia, Bethlehem & New England Railroad provide allowances to it, it is our understanding that they have been held in suspense account; several of the other plants and plant railways above mentioned are not receiving allowances, but, like the Bethlehem Steel Company and

its plant railway, are before us upon the record asserting their right to allowances so long as their competitors are enjoying such advantages. They have therefore been included in our findings.

We come now to the consideration of the six incorporated industrial railways described by counsel in submitting the stipulation as regular railroads. Like all the others mentioned of record, they are operated by or directly in the interest of the industries by which they are owned, namely, the Union Railroad Company, Newburgh & South Shore Railroad Company, and the Lake Terminal Railroad Company, controlled by the United States Steel Corporation or by one of its subsidiary companies, the Monongahela Connecting Railroad Company, controlled by the Jones & Laughlin Steel Company, the South Buffalo Railway Company, controlled by the Lackawanna Steel Company, and the Baltimore & Sparrows Point Railroad Company, controlled by the Maryland Steel Company, a subsidiary of the Pennsylvania Steel Company.

In the appendix attached to this report we have described in detail each of these six industrial roads; for our purpose here it will therefore be necessary only to mention the main features in each case.

LAKE TERMINAL RAILROAD.

This is the property of the National Tube Company, which has a large plant at Lorain, in the state of Ohio, and is one of the constituent members of the United States Steel Corporation. It is described at some length in the appendix to this report at pages 288 to 295. In presenting the stipulation, to which reference has been made, counsel classified it as a real railway. A careful examination of the record, however, reveals no substantial basis for differentiating it from the numerous other industrial roads that are defined on the stipulation as plant facilities and which we have found do not perform a service of transportation for which they may be compensated out of the rate. Its tracks are all located within the plant inclosure of the tube company. That industry covers a very considerable area and is of recent and modern construction. The location of its various departments and of the spur and switch tracks in and about the premises has been carefully planned, and it may be regarded as something of a model plant in the steel and iron industry. By reference to the plat (appendix, p. 290) it will be seen that the tracks of the connecting trunk lines extend to the property line of the industry, the Baltimore & Ohio at the west end of the plant and the New York Central lines and the Wheeling & Lake Erie at its east end. At these points of connection the trunk lines have extensive yard tracks for storing cars for the use of the industry and for the interchange of cars with its plant railway. In size and general

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character the plant resembles the plant described in *General Electric Co. v. N. Y. C. & H. R. R. R. Co.*, *supra*. In that case, however, the line carriers refused either to perform any service within the plant or to make any allowance to the industry for doing the work itself, and we sustained their attitude on the ground, as hereinbefore explained, that their obligation of service ended at the interchange tracks. The tube company, on the other hand, for doing for itself with its plant railway precisely what the General Electric Company was and still is doing for itself at its own expense with its plant railway, has forced the line carriers to concede divisions to it out of their rates. The amount of this subsidy in 1911 is shown of record to have been about \$372,000; this approximated the entire operating expense of the plant railway for that year, including the expense of the interworks switching. On the figures submitted of record, after taking from the gross allowances the expense assigned to the switching service to and from the trunk lines, there was a profit to the industry of over \$65,000. This was almost sufficient to relieve the industry of the cost of the interworks service, which is conceded to be a manufacturing expense, and in addition to leave it with a small net surplus. But this is not the only benefit to the industry arising from these relations between its plant railway and the line carriers. For the year 1911 it enjoyed a net profit of \$39,000 in per diem reclaims, being the excess of the reclaims over the amount of the per diem charges actually paid by the plant railway on the cars of the line carriers. Just what amount of demurrage is avoided by the tube company, through the reclaim arrangement between its plant railway and the line carriers, is not disclosed of record but it must be substantial. The industry also has the advantage not enjoyed by the ordinary shipper, of being able, through its plant railway, to detain a car for four days before demurrage commences to run, and such demurrage as may then accrue it pays to its plant railway and therefore to itself. In other words, besides relieving the industry of the entire cost of operating its plant railway, these allowances and perquisites from the line carriers afford it a substantial return on its investment in that part of its plant equipment.

The proof offered in support of the contention that this industrial line is entitled to allowances out of the rate and to these valuable perquisites and privileges, as for a service of transportation performed by it for the proprietary company and others, indicates that it has at the west end of the plant, near the rails of the Baltimore & Ohio, what is called a public-team track; at one or two other points there are similar sidings. These so-called public team tracks are within the plant fence and the gates giving access to them are guarded by watchmen in the employ of the tube company. Some 50 or 60 shippers

with residences or places of business near the plant are shown to have used these sidings. It is also claimed that the industrial road does some switching between the trunk lines. For the latter service its revenues for 1911 on its own showing amounted to but \$94.50; for the same year its revenues on all traffic claimed to be the traffic of outside interests amounted to but \$1,290.26. Most of this traffic is in less-than-carload lots; but it is to be noted that no warehouse or station is maintained by the industrial line for handling such shipments. Moreover, notwithstanding the claim that a service is performed for the general public, the showing of record for the year 1911 is that the outside traffic amounted to less than one-half of one per cent of the total traffic handled. This can have been no inducement for constructing the plant railway nor can it be an inducement for continuing to maintain and operate it. The limited outside service to the public is volunteered by the plant railway and its proprietary industry for no other purpose than to give color to its claim of being a common carrier.

The facts in reference to the ore handled by this industrial line are somewhat unusual. As indicated by the plat (appendix, p. 290), this plant is bounded on the north by the Black River, on the banks of which is a private dock belonging to the tube company and operated by it under the name of the National dock. The tracks on the dock and leading to it are operated by the industrial railroad under what is referred to of record as an easement. A small quantity of ore has occasionally been brought in and unloaded on the dock by outside boats under cargo charters, but the ore was the ore of the steel corporation; and in general all the ore passing over the docks is brought there by the Pittsburgh Steamship Company, also a subsidiary of the United States Steel Corporation. Moreover, so much of the ore as is not consumed by the tube company is used at some other plant of the steel corporation. During the last calendar year nearly 1,750,000 tons of ore unloaded on the dock were hauled thence through the plant by the plant railway to the interchange tracks and there turned over to the connecting trunk lines for carriage to various industries controlled by the steel corporation. The ore used by the tube company itself is hauled either directly to the furnaces or to the ore storage piles within the plant. This is admittedly a plant service. But when the ore is shipped out to other affiliated industries of the steel corporation it is hauled a distance of about four miles, over various tracks in the plant, to the trunk-line connections at the east end of the plant, or for a distance of between four and one-half and five miles to the the Baltimore & Ohio at the west end of the plant; the delivery could be made to the Baltimore & Ohio by means of a haul of one and a half or two miles, and by a slight rearrangement

of tracks the haul would be reduced to a few hundred yards. But whether the ore is used by the tube company or is hauled to the trunk lines for carriage to other affiliated industries the cars must pass over the plant rails and by an indirect route through the plant. Although the Baltimore & Ohio has its own dock at Lorain, in the neighborhood of this plant, where the ore could be landed and carried thence to other mills, it nevertheless permits this plant facility to absorb a substantial portion of its earnings on the ore moving over its rails to interior points, as the price of its opportunity to participate in the movement at all.

Giving due weight to all the facts shown of record in behalf of this industrial road we find no basis for holding that it performs any service from, into, or within the plant of the tube company that may be said to be a service of transportation. On the contrary, all the service performed by it from, into, or within the plant is conclusively shown by the testimony to be purely a shipper's service. The carriage of the outbound traffic of the industry, as a service of transportation, begins at the interchange tracks where the inbound transportation service also ends. In conducting a service for the plant beyond that point, the tracks and locomotives of the industrial railway are but mere plant facilities and the expense of their operation is legitimately a manufacturing expense, which ought to be borne by the industry and may not lawfully or fairly be assumed by the carriers and through them cast upon the general public. The ore consumed by the tube company is delivered to it at its dock within the plant; from that point its further movement to its furnaces or to the ore piles is admittedly simply a plant operation. As to the ore that passes through the plant to the interchange tracks of the line carriers and is carried thence by the latter to other mills of the steel corporation or to independent mills, the situation is somewhat different; but here also we find on the testimony that the plant railway performs no service that may be said to be a service of transportation for which it may lawfully be compensated by the trunk lines out of the through rates. It is simply a service performed with the plant equipment of the tube company for which it may be paid by the shipper but not lawfully by the carriers out of their rates. To sanction an allowance out of the rate is to overlook the real meaning and essence of all these arrangements. The vessels by which the ore is brought to the dock and all the facilities by which it is handled thence into the possession of the connecting trunk lines, for carriage to other constituent mills of the steel corporation or to outside mills, are simply the private facilities and property of one dominating control and ownership. The ore is the property of the steel corporation through subsidiary companies owned by it. The vessels are also its property and are not subject

either to public use or to public control. Nor is it contended that the dock of the tube company is a public dock; on the contrary it is a part of the plant of the tube company and is inclosed and surrounded by the plant, the public being thereby excluded from access to it. The rails over which the ore is moved through the plant to the interchange tracks of the trunk lines just outside the plant boundary lines are not only a part of the necessary plant equipment of the tube company, as we have found upon the record, but are completely enveloped by the plant and thus securely protected against any demands by the public upon the plant railway for a service of transportation. All the rails that are or can be used for this service are within the plant. Under such circumstances to ask this Commission to hold that the Lake Terminal Railroad performs, to, from, or within the plant, a service of transportation with respect to any movement over its rails, whether from the dock or to or from the trunk lines, is to ask us to sanction what, upon a just appreciation of the facts and a rational conception of the statute, can not be regarded as anything other than a device to evade the law in its fundamental principles, and to throw upon the general public, through the rates, a burden that is essentially a private burden.

There remains for consideration the very slight outside traffic that is moved by this plant railway to and from the team tracks that have been mentioned. This amounted in 1911 to 455 cars out of a total of 165,740 cars handled by the Lake Terminal Railroad, or substantially less than one-half of one per cent. It has been our observation that nearly all the larger industries that use rails and locomotives as an economy in their manufacturing processes are trying to find some basis for exacting tribute from the connecting line carriers in the form of allowances that will provide for the payment of the greater part, if not the entire cost, of operating these plant facilities. Ordinarily the first step in that direction is to incorporate a railroad company under the local law to operate the industrial rails. The next step is to seek some outside shipper to serve, so that there may be some color for the claim that the plant facility is serving the shipping public and is therefore a public carrier with respect to all its operations. If now, when all this has been arranged, the industry has a substantial traffic of its own to use as a means of compulsion, the carriers that reach it soon submit to its exactions and, through divisions or allowances out of their rates, assume the burden of operating the plant railway, giving to the industry, in addition, all the attendant perquisites in the way of per diem reclama and the remission of the demurrage charges that less fortunate shippers have to pay. The line carriers then turn to their general rate schedules, and by increasing other rates lay this bur-

den over upon other shippers. All these arrangements and efforts to serve a few outside shippers, who, as in this instance, are ordinarily already reasonably served by the line carriers, are mere devices intended only to afford color of a basis for the demands of the industries upon the line carriers for allowances and divisions out of the published rates, the result of which, as heretofore explained, is to throw their private burdens upon the general shipping public.

There can be no misunderstanding in the common conscience as to the grave injustice and discriminations growing out of such practices and we can not admit that we are without power under the act to put an end to them. Upon all the facts shown of record we conclude and find that the Lake Terminal Railroad is simply a part of the plant equipment of the National Tube Company and performs no service of transportation for which it may justly or lawfully be compensated by the connecting line carriers out of the rate. The outside shippers who find it convenient to use the plant equipment of the tube company have no lawful basis for demanding that the line carriers shall pay for the service out of their rates, nor may the latter lawfully practice undue and unjust discriminations and preferences in that form.

BALTIMORE & SPARROWS POINT RAILROAD.

The details as to this industrial line and its relation to the Maryland Steel Company are set forth at length on pages 356 to 362 of the appendix to this report. In its main feature it has some similarity to the Lake Terminal Railroad, which we have just discussed. The plant is located on the Patapsco River, on the banks of which, within what may be referred to as the plant inclosure, is a private dock belonging to the steel company. This is conceded of record not to be a public dock. The rails of the industrial line, which is incorporated under the railroad act of the state of Maryland, extend to within a few yards of the dock. Here, however, the interests of the so-called regular railway meet a powerful cross current in the shape of the interests of the controlling company, and its development as a railroad to serve the public is brought to a stop. A real railroad, with a policy of its own and armed with the power of the state to take private property and put it at the service of the public, would long ago have condemned this dock and made it a part of its public facilities. To reach navigable waters is inherently the policy of every real railroad with rails within striking distance of the water. But the record makes it entirely clear that this railroad, so called, has no policy of its own and that the interests controlling it have no intention of putting its facilities at the service of the public, except to the extent that may be necessary, in their judgment, to afford a sufficient basis

for claiming that it is a servant of the public and as such is entitled to draw upon the line carriers for the cost of its operation and for the extraordinary annual dividends paid upon its stock. The controlling industrial interests have therefore retained in the steel company the ownership and control of the dock and of the rails upon the dock. By these means the dock is kept in the position of being a private dock, and the public is thereby prevented, in connection with these important navigable waters, from making any demands upon the Baltimore & Sparrows Point Railroad for a service of transportation.

The whole situation has been planned and devised with the same ingenuity that is characteristic more or less of all industrial roads of this kind that are built to serve a particular industry and have no desire or purpose to serve the public except to the extent deemed necessary to lay a foundation, through divisions out of the rates of the line carriers, for relieving the industries of the cost of their operation and casting it upon the public. The plan worked out here is this:

The Pennsylvania Steel Company of New Jersey is a mere holding company. It owns practically all the stock of the Pennsylvania Steel Company of Pennsylvania. The latter company operates a steel plant at Steelton in that state. The holding company also owns the Maryland Steel Company here under consideration, as well as its plant railway, the Baltimore & Sparrows Point Railroad. The holding company also owns the Spanish-American Iron Company, a West Virginia corporation, which operates iron mines in Cuba, from which both the Sparrows Point and the Steelton plants draw their chief ore supplies. The ore comes in by water to the private dock of the Maryland Steel Company, and during the year ending June 30, 1912, as much as 450,000 tons of it passed over the dock of the plant and over the plant railway to the line carriers and thence to the affiliated plant at Steelton. Both these plants and their plant equipment being owned in the same interest, they form part of one investment, and their policies are shaped in the interest of that investment, the use of the plant railroad, although in form a public servant, being substantially monopolized in the interest of the holding company and the subsidiary steel companies, and the public being excluded from the use of it, except nominally, as before explained. There is much other ore in Cuba, a large mining operation there being owned by or in the interest of the Bethlehem Steel Company, a competitor of the Maryland Steel Company in the general markets for iron and steel products. The dock, however, being kept as a private dock, and the rails that approach and run over it being the private rails of the Maryland Steel Company, neither the Bethlehem Steel Company nor any other competitor is in a position to call upon

the Baltimore & Sparrows Point Railroad to serve it. Here, then, is what is called a regular railway, with one terminus completely surrounded by the plant and property of the proprietary company, or the company in the interest of which the industrial railroad is operated, so that the public has no access to it, the private dock and the plant forming a complete barrier.

The industry in the same way controls the whole community known as Sparrows Point. Its general property embraces the entire peninsula known as Sparrows Point and includes a town of about 6,000 inhabitants, substantially all of whom are employees of the industry, or members of their families. All the land in the town and practically all the employees' houses and other buildings are owned by the industry, which also conducts nearly if not all the mercantile and other establishments supplying the inhabitants with the necessities of life. The industry owns the electric-light plant, the water plant, and all other public utilities. It appoints and pays the police. Its control extends to every department of what under other circumstances would be a municipal government. In precisely the same way, the Baltimore & Sparrows Point Railroad is controlled in the interest of the industry, one terminus being completely enveloped by the property of the industry, where the public can not call upon it, as of right, for a service of transportation.

There has been some effort by the line carriers in this instance to limit the profit to the plant railway under the per diem arrangement by cutting down the reclaim period to three and one-half days. It was formerly four days, and it is stated of record that for the years 1908 to 1912, inclusive, the profits from reclaims amounted in the aggregate to \$20,000. The plant is on a demurrage basis, but, like other cases referred to in this proceeding, whatever demurrage is assessed against the industry is paid to the plant railway, owned and operated in its interest.

The passenger train service between Sparrows Point and Baltimore is conducted by the Northern Central line of the Pennsylvania Railroad over the tracks of the industrial line, and under an arrangement by which one-third of the passenger earnings to and from points on the industrial line are paid to the industrial line. The industry itself does all spotting within the plant and in this respect it differs from the National Tube Company. Its industrial road differs also from the plant road of the latter industry in that between the plant and its connections with the lines of the Baltimore & Ohio and the Pennsylvania railroads it hauls the traffic of the industry for a distance of four or five miles. Between the plant entrance and its connection with the line carriers there are a few small independent shippers. But out of the total freight traffic handled during the year 1912, only

5.51 per cent is claimed on the record to have been the traffic of outside interests not affiliated with the Maryland Steel Company, its plant railroad, or the holding company by which both are controlled and owned.

The question in this case, then, is whether an industrial railroad, which through incorporation or otherwise has been given the form and appearance of being a common carrier but which is so controlled in the interest of the industry as to prevent any real demand upon it by the general public, is entitled to such a status, with all the valuable privileges and exemptions to the industries arising therefrom, simply because there is a small outside traffic which it can move and does move and on the basis of which it claims to be a real servant of the general public? We answer this question in the negative. On all the facts of record we conclude and find that the Baltimore & Sparrows Point Railroad performs no service of transportation for which it may lawfully be compensated out of the rate by the connecting line carriers; that it is not in fact a bona fide common carrier entitled to divisions out of the line rates, but has been incorporated as such as a mere device for securing unlawful advantages for the industry; that it is a private facility performing a shipper's service for the steel company with which it is affiliated; and that undue and unlawful discriminations and preferences arise out of the allowances now being paid to it by the line carriers.

While we rest our conclusions and findings in all these cases upon evidence showing that these plant railways are necessary facilities in the respective industries and that their services to, from, and within the plants are properly an industrial service which the industries must perform for themselves and at their own cost, nevertheless, even if it were conceded that they are common carriers engaged in transportation as defined by the act and entitled to through routes over their lines, a grave question would arise under that provision of the statute known as the commodities clause. These plant facilities were constructed and are completely owned and controlled by or in the interest of the respective plants of which they are a part; the circumstances attending their construction and ownership, together with the facts pertaining to the traffic they claim to originate, and in fact handle, the way their use and usefulness to others is hedged about, and the manner in which they are managed and controlled, show conclusively that their construction, maintenance, and operation constitute them in fact as mere departments or divisions of the proprietary plant. Some of them are actually so conducted. Their organization in other cases and the forms adopted for conducting their activities constitute a mere device to cover up their actual function and real relation to their respective industries, to create an

impression that they are independent organizations, and to give color of legality for the unlawful advantages enjoyed through them by the industries. As we understand the decisions in cases involving the commodities clause, and especially the expressions of the court of last resort in a recently decided case, *United States v. B. & O. R. R. Co.*, 231 U. S., 274, these facts may be considered and the Commission may withhold its sanction of any rates or charges based upon the theory that these plant railways are common carriers where the traffic transported is owned in fact by the parties transporting it. These observations become especially pertinent when considering the Baltimore & Sparrows Point Railroad, because of the fact that the Pennsylvania Company, together with the Philadelphia & Reading, own 98 per cent of the common or controlling stock of the Pennsylvania Steel Company of New Jersey by which, as heretofore stated, the Maryland Steel Company and the Baltimore & Sparrows Point Railroad are owned. Although several different incorporated companies intervene, in effect and in real substance the Pennsylvania lines and the Philadelphia & Reading, in conducting these operations, are moving traffic of their own and are, therefore, in violation of the spirit if not the letter of the commodities clause in claiming for the Baltimore & Sparrows Point the status of a common carrier and sharing their through rates with it. As we understand the case just cited, this objection to such relations is equally applicable under the law to all the industries shown on the record as operating plant railways as common carriers.

NEWBURGH & SOUTH SHORE RAILWAY.

This is another of the six industrial roads classed by counsel on argument and in submitting the stipulation, to which reference has been made, as a real railway. We find on the record, however, no grounds for permitting the line carriers to deal with it on any such basis; on the contrary, from the facts shown of record we find it to be simply a plant facility. The full details of its relations to the American Steel & Wire Company, by which it is owned, and of its traffic and revenues will be found in the appendix at pages 295 to 301.

The wire company is one of the constituent members of the steel corporation. It has several plants located in different parts of the country, of which the largest is at Cleveland, in the state of Ohio. This is the plant served by the Newburgh & South Shore. It is an aggregate of several plants that were formerly owned and separately operated by other interests. When the separately owned industries were so acquired by the wire company, each of them had its separate plant railway, with ample rail facilities and connections with the line carriers for receiving its raw material inbound

and shipping outbound its manufactured products. For some time after the separate industries were brought under one control and ownership and were being operated by the wire company as a unit the transfer of material between the several plants continued to be performed by the two line carriers having connections with the plant tracks. But later the Newburgh & South Shore Railway was incorporated and took over the operation of the rails and locomotives of the several plants. New tracks were also laid to connect the plant railways up with each other. This was done for the admitted purpose of affording more convenient facilities for the industrial operations of the united plants. Theretofore they had not been so connected and there was no necessity for any connection between them; they were, in fact, more or less competitors in the general markets for steel and iron products, or, in any event, they stood at arm's length of one another. But after they had been united under one control and ownership it was found desirable, in the interest of economy in that control and ownership, to unite the several industries together for industrial purposes by having their plant railways also connected. This was accomplished through the incorporated industrial railroad.

The plant road does not formally own the several plant tracks, but operates them under a lease from the wire company. At the time of the hearing the only consideration passing from the industrial railway to the industry for the use of the extensive tracks owned by the latter was the agreement on the part of the former to bear the cost of maintaining the plant tracks. In other words, the capital of the industry, invested in that form, was put at the service of the industrial railroad without other compensation; but even that consideration is a paper transaction in view of the identity in ownership of both the industry and the industrial railroad.

In the vicinity of the two plants of the wire company at Cleveland and Newburgh, now operated as a unit, the line carriers maintain extensive interchange tracks. At convenient points the industrial railroad has established two large distributing yards, known as the Seneca street yard and the Marceline avenue yard, for the classification of cars received from or about to be delivered to the line carriers. The Marceline avenue yard was originally low marshy ground such as steel plants must necessarily have as a dumping place for slag and other waste products, and the present yard of the industrial road at that point is built on a slag pile. Both yards are simply assorting and switching yards for the industry, where the plant railway so drills the inbound trains as to permit it to deliver the raw material at the furnaces and other mills of the steel and wire company in accordance with their industrial requirements. The same classification of cars was formerly done within the several plant inclosures until the industrial

development became so great as to require additional room for that work. This, however, is clearly a part of the industrial processes of the company, and is not transportation.

There are only two outside industries of importance that may be served by the Newburgh & South Shore, namely, the Corrigan-McKinney Company and the Cleveland Furnace Company, each of which has its own plant railroad. At this time neither of these concerns contributes any traffic to the Newburgh & South Shore, each having made arrangements with the line carriers for allowances. It is stated of record that there are some other shippers with small traffic who use this industrial railroad, but they are located in the immediate vicinity of the rails of the line carriers and have ample shipping facilities without the intervention of the Newburgh & South Shore. Altogether the revenue of the latter from outside sources during the year 1911 was only about 3 per cent of its total freight revenues. Moreover, it has no facilities for handling less than car-load freight, nor has it any public team tracks. It issues no way-bills or bills of lading. Billing of that kind is issued only by the line carriers when they receive the traffic on their own rails. There is a passenger service, but the record shows that about 90 per cent of the passengers carried by the industrial railroad are employees of the wire company, this being its method of assembling its working force and keeping them in service.

From all the facts shown of record we conclude and find that the Newburgh & South Shore Railway Company is simply a plant facility of the American Steel & Wire Company and performs no service of transportation for which it may lawfully and without undue discrimination be compensated by the connecting line carriers out of their rates.

MONONGAHELA CONNECTING RAILROAD.

This road is owned by the Jones & Laughlin Steel Company, a great independent industry with an extensive plant located on either side of the Monongahela River, within the corporate limits of the city of Pittsburgh. The plant as a whole covers a large territory, and embraces a number of departments for the production and manufacture of iron and steel products, including blast furnaces, coke ovens, and mills, with necessary storage room for raw materials and manufactured products. It is needless to say, as the whole record demonstrates, that the widely separated departments of a plant of this magnitude can not be operated economically, if at all, without the facilities afforded by a plant railway; and it is clearly shown of record that the Monongahela Connecting is operated entirely in the interest of the industry, and entirely for the purpose of affording it the necessary facilities for the quick movement of mate-

rials into the plant, and between its various departments, in the quantities and at the times required by the manufacturing processes of the industry, for promptly removing the ashes, slag, and other waste products that quickly accumulate in large quantity, and for efficiently and quickly gathering up its manufactured products and delivering them to the line carriers for movement to the markets. The coke ovens and furnaces are on the north side of the river, while the steel mills and other departments are on the south side of the river. All the metal used in the south side works must be transported in a molten state from the furnaces on the north side. There is also a continuous movement of other materials between the mills on either side of the river. It is apparent, therefore, that it would be difficult, if not impossible, to carry on the large industrial operations of the company without all the track facilities afforded by the industrial railroad. There are said to be some independent shippers served by it, the largest of which are the two plants of the National Tube Company, each of which has plant tracks operated by its own power, the Monongahela Connecting performing the switching between the interchange tracks at each plant and the tracks of the line carriers; but its service for this outside interest is merely incidental to its service for the Jones & Laughlin Steel Company.

The claim is advanced that this industrial line was constructed in order to give the trunk lines on one side of the river access to the other side and vice versa, and to give them a connection with each other, and that it is therefore a public convenience and a public necessity. It appears of record, however, that no interchange movement has been made between any of these line carriers over its rails. While contending that it was built to serve the public, and that it had at one time a substantial outside traffic, its special counsel on the argument, in reply to a question from the bench, was compelled to admit that at this time only three per cent of its traffic is for outside interests. A glance at the plat accompanying the more detailed description to be found in the appendix hereto, at pages 320 to 329, will show this industrial railroad to be nothing more than a series of switch and spur tracks, all of which are vitally necessary for the economic operation of the furnaces and mills of the company that owns it, and all of which enter into and are a necessary part of its industrial operations.

As is characteristic of all these so-called railroads, this industrial line has no policy as a railroad and has shown no purpose or plan to develop into a real facility for the public. When it was extended in 1888 along the north bank of the river toward the west, it stopped at the Soho furnaces, which were acquired at about that time by the proprietary steel company. This extension of the plant railway was

necessitated by the extension of the plant itself, and was not brought to a completion in any sense for the benefit of the public. The extension toward the east, on the north side of the river, was made in order to reach some low lands, owned by the same interests, and which have since been largely filled and brought up to grade with the refuse and waste products from the company furnaces, this, as we have shown, being one of the industrial necessities of steel and iron mills and furnaces. Is this then a real railway, as defined in the stipulation, or is it a mere plant facility? Shall this large industry bear its own proper burdens or, because its plant facility railroad, controlled and made to shape its course and policy wholly in the interest of the industry, is able, as an incident to its plant service, to pick up a very small amount of traffic from outsiders, shall we hold it to be a common carrier and thereby lift that burden from the industry, turn this part of its plant equipment into a source of large profit, and impose the burden on the general shipping public?

As in the case of the Lake Terminal and the Newburgh & South Shore, there is no basis of record for holding that this industrial railroad performs any service from, into, or within the plant of the steel company which may be said to be a service of transportation. The service of switching cars between the interchange tracks of the various line carriers and the points of loading or unloading at or within the various departments of the plant is conclusively shown by the testimony to be purely a shipper's service. The whole policy, purpose, equipment, and service of the industrial line are completely bound up with and limited by the policy and requirements of the industry that owns it, and its purely incidental service for others is carried on, not for the profit flowing from it, or with the plan of further developing a service for the public, but because it affords color of legality for the extraordinary financial benefits enjoyed by the industry through this device. On the argument counsel for the company stated that one of the characteristic sights of Pittsburgh in the early days of the iron and steel industry was the long lines of trained horses slowly dragging heavy pieces of manufactured iron and steel through the streets from these mills to the receiving stations of the line carriers. Horses and wagons were also used to haul the raw materials from the stations of the line carriers to the mills and furnaces. This is precisely the service that is now performed for the Jones & Laughlin Steel Company by its industrial railroad. It is simply a different and more economic means of doing the same thing. But, like the horses and vehicles previously employed, it is a plant facility; and the question for decision here is whether the burden of its operation may be lifted from the industry and imposed upon the line carriers and then cast, through the rates, upon the general ship-

ping public, because it is incorporated as a railroad and has a slight outside traffic. From all the facts of record we answer this question in the negative. We conclude and find from the testimony that the Monongahela Connecting Railroad performs no service of transportation for which it may justly and lawfully be compensated by the connecting line carriers out of their rates. The outside shippers who use the plant equipment of the Jones & Laughlin Steel Company to serve their purposes are not entitled to have the line carriers bear the burden of the expense out of their rates.

Before leaving this industrial road it may be well here to mention a fact of history in the steel and iron industry developed of record, namely, that it was the predecessor of the Jones & Laughlin Steel Company that originated, in place of the old-time rebate, the ingenious substitute of allowances to plant railways. This was done in 1885, while the need of legislation for the regulation of interstate carriers was already a matter of public discussion and of debates in Congress. The contract for allowances entered into in 1886 between the Monongahela Connecting Railroad and one of the trunk lines was more or less a secret and for several years puzzled and confused the iron and steel industry in that district. When its terms were fully understood, other line carriers commenced to make allowances of one kind and another, not only to this plant but to others. From that beginning the practice has spread, partly to hold the traffic in some cases, and in others because of the necessities of competition, and partly to avoid charges of discrimination, until it has reached its present proportions and has become a public question.

THE UNION RAILROAD.

This is the largest of all the plant railways described on the record before us. Its history and the extent and the scope of its operations are summarized in the appendix hereto at pages 332 to 349. It is the property of the Carnegie Steel Company, the most important of the subsidiaries of the steel corporation.

One of the witnesses, testifying in support of its present allowances and other advantageous arrangements with its trunk line connections, boastfully said at the hearing that the annual tonnage of the Union Railroad exceeds that of the Union Pacific and the Missouri Pacific combined. This statement, coupled with the fact that its services for outside shippers for the year 1911 aggregated only 2.49 per cent of its total tonnage and yielded only 3.30 per cent of its total revenues, shows at once how necessary it is as a part of the plant equipment of the Carnegie Steel Company and how completely its activities are absorbed by the requirements of that industry.

It was constructed in 1895 for the avowed purpose of connecting three separate plants of the proprietary company. Each of these plants at that time had its own plant rails and each then leased its outside tracks to the Union Railroad. The result was that the line carriers thereafter could gain access to the combined plant only over the tracks of the Union Railroad. Later when the Carnegie company acquired the ownership of the Carrie furnace, then one of its competitors, and still later built a mill for the manufacture of axles, the rails of the Union Railroad were extended to these new properties. There were subsequent additions that will presently be mentioned; but the record shows not only that all the tracks of this industrial line, as originally built, are necessary and actually used in order to transport material in the course of manufacture from one of these affiliated plants to another, but that no plants or industries are reached by its rails, as originally laid out, other than those of the Carnegie Steel Company and the American Steel & Wire Company, another subsidiary of the steel corporation. Not only is this the case, but because of the topography of the valley there is no room for any outside industries on its original rails. The Carnegie plants lie on either side of the Monongahela River in a pocket in the hills, and the company has so occupied the banks of the river with its mills and furnaces and with the tracks that connect them together as to leave no room for outside interests. The industrial railroad, therefore, has no opportunity over these rails either to serve outside interests or the general public. The only exceptions to this general statement are a retail coal yard near the Homestead plant and a waterworks plant, both of which, as we understand the situation, are already reasonably served by the line carriers.

The river has been one of the dumping grounds of the Carnegie Steel Company, and for approximately eight miles along its banks the rails connecting these plants rest upon a slag wall, varying from 20 to 40 feet in depth and built up out of the waste products of the mills of the company. As we have heretofore said, many producers of pig iron are put to a substantial industrial expense in disposing of the waste products of their mills and furnaces, but to the Carnegie Steel Company, through its ownership and capitalization of its plant railway and the enjoyment by the latter of divisions out of the rates of the line carriers, the slag pile has become a source of great profit.

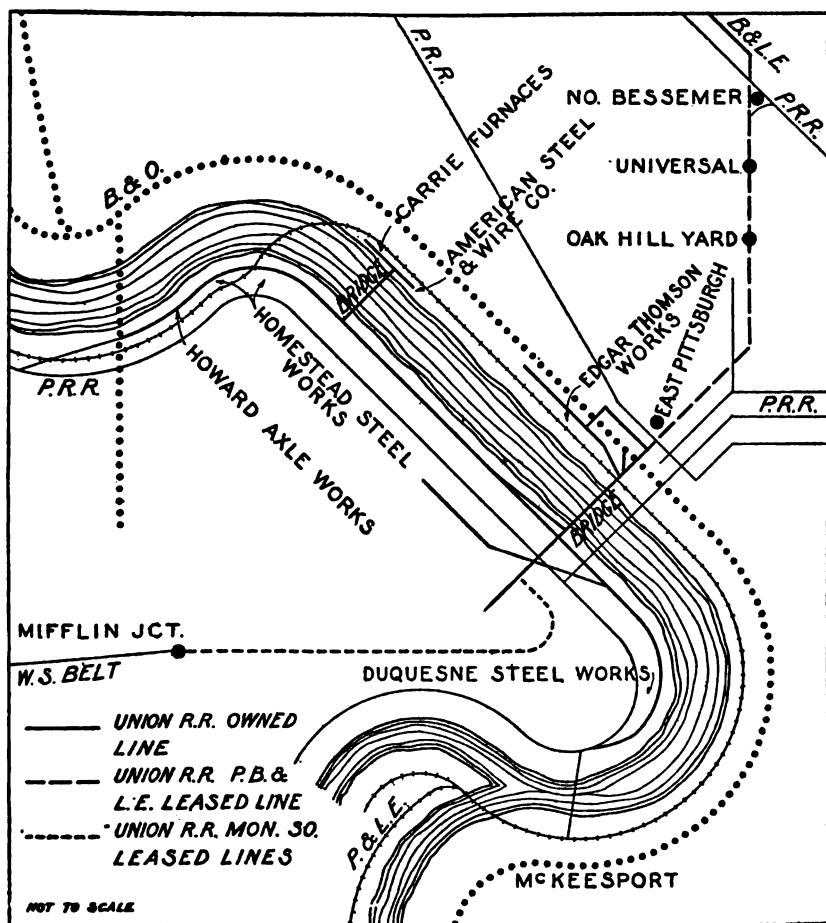
The immense scope of the manufacturing operations of the Carnegie Steel Company at this point is shown by the fact that the industry is made up of five branches that were formerly separately owned, all of which are now connected with each other by the tracks of the Union Railroad, and are operated as a unit and as one industry, each department or branch of which, to a greater or less extent, as the record shows, is dependent upon the other. The mere fact that

these departments are somewhat more distant from one another than in some of the other cases before us is no ground, in our judgment, for according the Carnegie Steel Company any results that are denied to its competitors. The record shows that it is one industrial operation with a plant railway joining its various departments together. As in other cases, the plant railway is used for the removal of the slag and other waste products of all these departments to the dumping grounds of the industry. By the same means the hot metal from the furnaces on the north side of the river is distributed to the various departments on the south side of the river and the bridges at Rankin and Port Perry are each equipped with protected tracks for this purpose. There is also a constant and necessary movement of material between the several departments or plants, such as hot metal, billets, pig iron, etc, to serve the processes of manufacture. The tracks leading from the Duquesne works of the steel company, at one end of the line, to the Howard Axle works of the steel company, at the other end, are constantly used, and shown of record to be necessary, for the movement of material between the departments on the south side of the river; and these five departments or plants, as the record shows, could not be operated as they are now without the tracks of the Union Railroad.

All the track facilities of the Union Railroad are constructed and located for the convenience and economy of serving the manufacturing operations of the steel company. Its superintendent testified that the plants of the steel company located on the Union Railroad could not be operated as a unit without all its present tracks. On cross-examination this statement was somewhat qualified, and it was contended that the steel company's operations at this point ought to be considered as two units; but he admitted that the operations of the steel company as a whole could not be carried on without using all the tracks of the Union Railroad. From all the evidence and testimony adduced with respect to this situation we conclude and find that, whatever may have been the conditions before all these plants were consolidated into the Carnegie Steel Company, there can be no question that all its operations in this pocket in the hills, heretofore described, are an industrial unit and are conducted as such with the Union Railroad as a plant facility. The so-called Monongahela Southern branch was acquired and extended mainly to make available, for many years to come, a convenient dumping ground for the waste material from all the furnaces and mills of the Carnegie company at this point, and the branch to North Bessemer is a necessary convenience for the movement of slag from the furnaces to the large cement plant of the steel corporation at Universal.

So far as the rails and tracks above mentioned are concerned we conclude and find upon the evidence that they are plant facilities,

and that no service over these rails, whether for any of the several departments of the Carnegie company or for others, is a service of transportation for which the Union Railroad may be compensated out of the rate of the line carriers. That service involves simply the use of what is the plant equipment of the Carnegie Steel Company. In this connection there are some features in this case, described at length in the appendix, that may well be mentioned at this point. The rails



of the Pennsylvania not only extend through the Homestead works, but they adjoin the plant property of the Howard Axle works, the Duquesne mills, and the Edgar Thomson works of the Carnegie company. The tracks of the Pittsburgh & Lake Erie extend to the property line of the axle works, the Carrie furnace, the Edgar Thomson works, and the plants of the American Steel and Wire Company. That line originally passed directly through the Edgar Thomson plant,

but the right of way was relocated and the tracks removed to a point outside the works. The Baltimore & Ohio also reaches the Carrie furnace and the wire plant, and its tracks pass directly through the center of the Edgar Thomson works.

The two branch lines of the Union Railroad, however, need special consideration, and for convenience the plat appearing at page 333 of the appendix, which is not drawn to scale but is sufficiently accurate for these purposes, is reproduced on the preceding page.

From North Bessemer to the bridge south of East Pittsburgh the Union Railroad has trackage rights over rails that belong to the Bessemer & Lake Erie Railroad. The latter line extends to Conneaut Harbor on Lake Erie, a distance of about 160 miles, and also belongs in its entirety to the Carnegie Steel Company. The docks at Conneaut and the vessels that bring the ore to the docks are the property of the steel corporation, as is also the ore which forms their cargoes. In other words, the vessels, the ore, the docks, the rails, and the equipment are equitably and beneficially the property of the steel corporation, this being also true of the mills and furnaces to which the ore is destined. Under such circumstances it makes but little difference in the results and consequences how the charges set up for the service are divided among the various component parts of the general investment. Nevertheless, the Bessemer & Lake Erie is operated as a common carrier and doubtless is justly entitled to be so considered, notwithstanding the fact that its tonnage is destined largely to the various plants of the steel corporation. The right of the Union Railroad to have divisions out of the rates must therefore be determined.

Just why the rails of the Bessemer & Lake Erie from North Bessemer to the bridge near East Pittsburgh have been leased to the Union Railroad is not satisfactorily explained of record. Except for this trackage right over those rails the Union Railroad, with respect to the large ore tonnage destined to these plants, would practically have no haul outside the combined plant. The controlling interests were doubtless not unmindful of this and of the need of some color for the claim that the Union Railroad performs a service of transportation, and there is a fair basis for the inference that this was the underlying purpose in making these arrangements between the industrial line and the Bessemer & Lake Erie. Without such a haul by the Union Railroad the Bessemer & Lake Erie would deliver all this traffic practically within the Edgar Thompson works, and that would sweep away even the appearance of the legality which the industry now asserts for allowances to its industrial railroad and for the very valuable results flowing to the industry from its per diem reclaims upon the trunk lines and the practical elimination of demurrage as a transportation charge against the industry.

At the point called Universal, on this leased line, the steel corporation has an immense cement plant, which, as heretofore stated, utilizes the slag of the Carnegie mills. The cement company, by contract, has the right to run special trains to the cement plant for the exclusive use of its employees, but the Union Railroad conducts no general passenger traffic over these rails, that being done by the Bessemer & Lake Erie. There are two or three independent coal mines on these rails, one of which, as we understand, is no longer in operation, and the others will soon be worked out. But this traffic is wholly incidental to the service of the industrial road for the industry that owns it. The record, we think, makes it entirely clear that the Union Railroad has not solicited outside traffic, and has at no time shaped its policy so as to encourage outside traffic or to put its facilities at the service of the general public, except to the extent that the controlling interests find helpful in giving it the color of being a servant of the general public. Carefully weighing the whole testimony we find no basis of record for the contention that the Union Railroad Company performs a service of transportation for the Carnegie company or its affiliated plant between North Bessemer and its own plant. On the contrary, we hold it to be entirely a plant facility which the proprietary interests use for their own benefit and convenience in their manufacturing operations, and the burden of which they alone lawfully may bear.

It is contended that the other branch of this industrial line, extending toward the south to a connection with the West Side Belt at Mifflin Junction, performs a carrier service in that it forms a link between the Wabash-Pittsburgh Terminal and the Bessemer & Lake Erie; but the record shows that the principal dumping grounds for slag and other waste from these furnaces and mills are located on this branch. There is on these rails a concern that manufactures slag products, utilizing for the purpose the slag of the Carnegie mills. There are also several coal mines. Their traffic, however, is almost negligible, and their output is used by the Union Railroad and the Carnegie mills. The service of this branch is confined very largely to the interchange of cars between the line carriers, including the Bessemer & Lake Erie. During the year 1911 about 36,000 cars are shown to have been handled by the Union Railroad between the connecting lines. This is said to have been 3.89 per cent of its total tonnage and to have yielded it 5.50 per cent of its total revenues. More than 10,000 of these cars, however, contained ore of the steel corporation landed from its boats at Conneaut Harbor upon the docks of the steel corporation and carried over the rails of the Bessemer & Lake Erie to North Bessemer, thence, under trackage rights over the latter's

rails, moved by the Union Railroad to Mifflin Junction, and thence delivered by the West Side Belt to the Clairton Steel Company, another constituent member of the steel corporation operated by the Carnegie Steel Company, where it was handled into the plant by the St. Clair Terminal Railroad, a mere plant facility, as we have found in the foregoing pages, but which nevertheless enjoys a large allowance out of the rate.

It is interesting to note from the record that out of the through rate of 96 cents a ton on ore, formerly in effect from shipside at Conneaut to the Clairton plant, the dock company received 2 cents per ton, the Bessemer & Lake Erie 45.2 cents, the Union Railroad 17 cents, and the St. Clair Terminal 16.8 cents, leaving for the West Side Belt, which is the only facility in the through movement not belonging to the steel corporation, earnings of 15 cents per ton. By a subsequent order of the Commission the 96-cent rate has now been reduced to 88 cents, but the divisions of it are not shown of record. Some coal is received by the Union Railroad at Mifflin Junction for movement northbound to points on the Bessemer & Lake Erie, mostly destined to Conneaut Harbor for lake ports. This is altogether outside traffic. It is our understanding also that arrangements are being made to extend the Montour Railroad of the Pittsburgh Coal Company to Mifflin Junction, or to some other point on the Union Railroad. The plan underlying these arrangements is to fix through coal rates on a basis that will be an inducement to the coal company to use that route to the lake ports, and thus give the Bessemer & Lake Erie Railroad a loading for its northbound empty ore cars. As to this traffic we think it may fairly be said that a service of transportation is performed for which the Union Railroad is entitled to receive compensation out of the through rates. It is manifest, however, that to prevent discriminations and unlawful results we must reserve control over its divisions, and for that purpose this part of the record will remain before us for further examination and for a definite order.

Over this last-mentioned part of the rails of the Union Railroad, known as its Mifflin branch, very little steel-company traffic moves except coal; but, as we have just explained, a substantial volume of ore of the steel corporation does move over it to its subsidiary mills at Clairton. Originally this branch was acquired largely to open up to the industry a new dumping ground for its waste products, and it is still used for this purpose. It was finally connected up with the West Side Belt, largely for the purpose of securing the outside traffic just mentioned.

SOUTH BUFFALO RAILWAY.

The South Buffalo Railway Company, the last of the six industrial lines mentioned on the stipulation and spoken of by counsel as

real railways, is entirely owned by the Lackawanna Steel Company, which operates a large plant in the vicinity of Buffalo, in the state of New York. The conditions disclosed in this case, as stated from the record at pages 363 to 371 of the appendix hereto, differ in no important particulars from the conditions surrounding any other of the industrial railroads examined in this proceeding.

The Lackawanna Steel Company is an old enterprise, and its plant was originally located at Scranton, in the state of Pennsylvania. At that plant the industry operated its own rails in and about the plant and received no allowances out of the line rate. Some years ago, however, the entire industry was moved to a point now called Lackawanna, then a few miles south but now adjoining the enlarged corporate limits of Buffalo. Here the company has one of the most modern iron and steel plants that has come under our observation. That point was selected because it is an ideal location for a great steel industry. Besides being relatively cheap property at the time of its purchase, it is on the lake shore, where the ores of the northwest moving over the lakes may be landed directly at the plant docks. The lands are also low, and this gives the industry, right at the doors of its mills and furnaces, a dumping ground for its waste products. In addition to the advantages of the property for such an enterprise, the state of New York has made to the company an extensive grant of submerged lands in front of the shore occupied by the industry. The result of this is to provide, for years to come and at a minimum expense, a place for the disposition of the refuse and waste of the mills; at the same time the company in making that use of the property is building up to grade an extensive area of land of large value to the industry, and which will enable it, without additional expenditures for land, to expand to greater proportions as its business grows. One of the functions of its plant railway is to do this work, and this, as the record shows, can be done so economically in no other way.

The property is well located also with respect to the establishment of the advantageous relations between plant railways and the line carriers, the legality of which is here under consideration. As we have seen, the trunk lines formerly ran immediately through many of these plants, and that necessitated the removal and relocation of their rails outside the plants in order, among other things, to give free scope to the development of this device for paying allowances and according to those industries the other privileges and benefits hereinbefore described. This property, however, had not been traversed by the trunk lines, although the rails of several important carriers reach its immediate vicinity. The industry therefore had an unobstructed opportunity to extend its plant railway to the tracks

of the line carriers. That was the course pursued. Although the plant is within three-quarters of a mile of the main track of the Lake Shore Railroad, and the inbound and outbound traffic of the industry is heavy enough to have yielded that company enormous returns for the slight cost of extending a spur track to the industry, this was not done. The rails of the Pennsylvania and other lines are also within a mile or less of the property, and those companies too would gladly have run their rails to the plant. But, as we have seen, this is not desired in the iron and steel industry. What they want, and what the influence of their immense traffic compels the line carriers to agree to, is an opportunity to make a profit on their own traffic by extending their plant rails to the trunk lines. In this manner, rails that are essentially a part of the plant equipment, and a necessary plant facility, are given the appearance of being something more than a plant railway; and under such color of legality this industry has ventured to receive and, under the influence of its large traffic, has compelled the line carriers to accord to its plant railway advantages and privileges which have lifted from the industry a large part of the cost of operating this part of its plant equipment, and turned that part of its industrial investment into a source of profit to the industry at the expense of the line carrier and, in ultimate analysis, at the expense of the general shipping public.

In support of these privileges and benefits of great value thus enjoyed by the industry it is contended that its industrial railway, the South Buffalo, stands in a class by itself. The weight of its rails, its ballast and roadbed, and the general character of its construction are referred to as tending to show it to be a public carrier; and in those respects the evidence shows that it is practically on a par with the line carriers with which it connects. This is equally true, however, of the tracks of several other of the industrial railways herein found to be mere plant facilities. Attention is also called to an expensive viaduct by means of which the industrial road crosses the highway. There are several other features that are emphasized as a basis for the claim that it performs a service of transportation. Its passenger traffic, wholly wanting in nearly every other case before us, is one of the matters to which its counsel directs our special attention. The road has two passenger cars which it commenced to run twice a day in each direction, once in the morning and again in the evening, while the plant was under construction. The record shows that there was no other way by which the workmen could get back and forth daily to and from their work. It also shows that the electric street car line can not be depended upon by employees of the plant, now living in Buffalo, for reaching the plant promptly in the morning. It was for this reason that the steel company, after the

plant was opened for operation, continued to run its passenger coaches twice daily to and from Buffalo. But to do this it has arranged trackage rights for its plant railway over the rails of the Delaware, Lackawanna & Western for three miles into its passenger station. These iron and steel mills employ thousands of men—in this instance they number about 5,000—and there is nothing of more urgent necessity in the successful conduct of their mills than that those who labor in them shall report promptly in the morning for their daily duties. A subsidiary company of the steel corporation, as we have seen, hires daily trains for this purpose: this company has its own plant railway do the work. But in each case it is essentially the same thing—an industrial necessity—and the two companies have adopted practically the same means for meeting this industrial problem. In its efforts to house its employees near its works the steel company has built two industrial villages, the north village having 492 houses and the south village 123 houses, all belonging to the proprietary steel company. But many of its employees prefer to live in Buffalo, and the company, in its own interest and to meet its own industrial necessities, has provided this so-called passenger service for them over its own plant railway.

How meager and slender a basis the alleged passenger traffic is for the claim that the plant railway is a common carrier is strikingly shown from the fact that out of its total revenues of nearly \$700,000 for the year 1911, the so-called passenger service, including all the nonemployee passengers that the plant railway may have carried, returned a gross revenue during that year of only \$1,713.95. The gateman at the plant sells tickets, and for that duty he is paid by the industrial road. The train carries neither mail nor express: and, as before stated, it moves for three miles over the industrial road and then under trackage rights to the passenger station of the Delaware, Lackawanna & Western.

In this case, as in several others, the ore consumed by the steel company is landed from lake vessels directly upon its own plant dock, to which the rails of the industry, leased to the plant railway, extend. The dock is not a public facility of the South Buffalo Railroad Company, but is the private property of the industry. Although some ore has been landed there and carried by the industrial road through the plant for movement to other mills, this can only be done with the consent of the steel company. It is not a service that either a consignor or a consignee of ore may demand as of right, either of the industrial company or of its industrial railroad. The shipping public has no right of access to the dock and, therefore, has no opportunity to demand a service of that kind of the plant railway.

The inability of the shipping public to reach and demand a service of transportation at the hands of this industrial road is practically no less complete here than it is at other plants described on this record. This is well illustrated in the case of traffic handled over its own rails in connection with a line movement upon the Pennsylvania. Within the plant the industrial railroad operates 47.32 miles of track which it leases from the industry and not one foot of which is owned by it. Between the points where it leads from the plant and the two interchange points with the Pennsylvania it has a haul over its own rails of only 1,750 feet in one case and 2,000 feet in the other; in the case of traffic to and from the Lake Shore the haul is slightly longer. Not a single outside interest appears to be served by it between the plant and the Pennsylvania interchange tracks; and this appears to be equally true as to the slightly longer haul to the Lake Shore interchange point. In other words, 47 miles of the rails that may be used in that traffic are inclosed within the plant of the steel company where they may serve only the steel company's interests and where the general shipping public has no access to them and can make no demand upon the plant railway for a service of transportation. Since the original hearing we are advised that a small brick station has been built, but this station is within the plant property and is surrounded by a plant fence. Access to it by shippers can be had only through the plant gate. Practically the entire body of the so-called real railway is completely enveloped and inclosed by the private property of the steel company, and it emerges from the plant to reach the rails of the Pennsylvania and the Lake Shore for purely plant purposes and practically without any public at hand to serve.

It is contended that the outside traffic of the plant railway approximates 23 per cent of its whole tonnage, but this claim is not sustained by the record. Of the total tonnage handled by the industrial railroad for the year 1911, only 12.66 per cent was for outside interests, and this produced only 11.28 per cent of the total revenue.

The Buffalo & Susquehanna Railway Company has no terminals of its own in Buffalo, although it has ample access to that point over the rails of the line carriers. For reasons not disclosed of record it largely uses this plant railway, instead of the more direct rails of the trunk lines of that city, to switch its cars into the public terminals. There is a reciprocal arrangement between the two lines, under which each uses a part of the tracks of the other; and all interchange of traffic between the Buffalo & Susquehanna and the other line carriers is effected under that trackage arrangement. The cars are moved by the power of the South Buffalo. This service does not enter into the traffic statistics or operating revenue accounts of South Buffalo, but is treated by it as rentals or expenses of joint

facilities. It will be noted that the service is not a service rendered by it either to consignors or consignees; its facilities are used by the Buffalo & Susquehanna simply as the means for interchanging the latter's traffic with other line carriers. Moreover, in performing that service for the Buffalo & Susquehanna the South Buffalo takes the traffic directly through the plant of the steel company for a distance of nearly two miles.

Some independent traffic is handled by this industrial line to and from the Rogers-Brown mills, just north of the plant of the steel company. But those mills have their own plant tracks, which are directly connected with the rails of the Pennsylvania, thus affording that industry all necessary transportation facilities. When the traffic is handled by the South Buffalo it also must ordinarily pass for nearly two miles directly through the plant of the Lackawanna Steel Company and over rails that are within its fence lines.

Whatever plans the industry may have for the development of this industrial road, upon all the evidence and testimony of record with respect to it we conclude and find that it performs no service of transportation from, to, or within the plant of the Lackawanna Steel Company for which it may justly be compensated out of the rate of the line carriers. We find it to hold the same relation to that industry that we have herein found other plant railways hold to their respective proprietary plants, namely, it is simply a part of the equipment of the plant, constructed for plant purposes, and wholly so used except for a small outside service that it is able to perform as an incident to its service to the proprietary plant. We further conclude and find from the evidence that the allowances it receives from the line carriers out of the rates are unduly preferential and constitute an unlawful concession from the rate, and that the outside interests who use this plant equipment for their own purposes may not lawfully look to the line carriers to bear the burden out of their published rates.

The Rogers-Brown Company, as heretofore mentioned, is reached by the lines of the Pennsylvania. Several other plants that are here claimed to be outside shippers are immediately adjacent to the rails of the line carriers and would be immediately on their rails except for the fact that the South Buffalo intervenes between them. Two of these industries are on the rails of the Buffalo & Susquehanna and can be reached by the South Buffalo only under the trackage arrangements between the two lines heretofore mentioned. The materials used by those companies and by all the other so-called outsidershippers, except the Rogers-Brown Company, are largely the products of the mills of the Lackawanna Steel Company. There are only eight or ten such shippers and they have located their plants

on land bought or leased from the Stony Point Land Company. There was some difficulty in eliciting the facts in respect to the history and purpose of that organization; it finally developed, however, that it was formed originally as a preliminary step in the removal of the Lackawanna Steel Company from Scranton to its present location; that the land company purchased all the lands now occupied by the industry, as well as that lying between the plant and the main lines of the Pennsylvania, Lake Shore, and other carriers; that every stockholder in the land company was also a stockholder in the steel company, although many stockholders in the latter had no interest in the former. The tracks of the South Buffalo have been drawn around the south end of these lands and then run north immediately adjacent and parallel to the rails of the Pennsylvania and other line carriers; in this way they intervene between the rails of the line carriers and these outside plants. The latter have been located on the outskirts of the steel company's plant, from which, as stated, they draw their supplies, probably for convenience and economy and to avoid freight charges on their materials. The short switching movement to them from the steel plant takes the place of cartage and is simply another use made by the plant of its plant railway in its own interest. This distribution of its own products over its own plant railway to a few industries located on the very coat tails, so to speak, of its own plant can not fairly be regarded as a service of transportation by a public carrier.

What this industry desires and now receives, through the device of incorporating its plant facility and claiming for it the status of a common carrier, is not an opportunity to serve the general public but an opportunity to make a profit out of the rates of the line carriers, on its own traffic, and thus have the burden of the cost of this part of its plant equipment largely lifted from its own shoulders and borne by others. Nothing is more alluring to a large industry than an opportunity to put itself in such a position of advantage with respect to its own traffic, with the very valuable per diem privileges and demurrage exemptions that attend it. But the time has come for drawing the line sharply between what is in fact a public service and what is in fact a purely private and selfish service, although conducted under conditions devised to give it another color and appearance.

FURNACE ALLOWANCES.

The last of the four different forms mentioned in the opening paragraph of this report in which the line carriers make contributions to iron and steel industries is through the so-called furnace allowances. At the time of the hearing these allowances were \$2.25

a car on ore, \$1.75 on coke, and \$1.60 on limestone. The allowances are referred to repeatedly on the record as rate adjustments, but the meaning of this phrase as used by the witnesses is not satisfactorily explained. It is also said that the allowances are partly rate adjustments and are partly made for service performed. But a majority of the witnesses said they were paid in order to equalize conditions at the various blast furnaces so that the assembling cost of materials that go into a ton of pig iron would be the same at all iron and steel industries. This is the explanation that has been made in other proceedings before us; and this view is supported by the rather significant fact that the allowances now usually accorded to these industries are precisely the allowances originally arranged for in the contract hitherto mentioned between the Monongahela Connecting Railway and the Pittsburgh & Lake Erie. If, however, it is the real purpose of the line carriers through such allowances to put the industries on a parity so far as the cost of manufacture is concerned, it necessarily follows that they have undertaken in this manner to regulate competition as between these industries. This is not a duty devolving upon common carriers, nor do we understand it to be a lawful procedure. Moreover, if that is the intent and purpose of a furnace allowance it is not really carried out, for there is a striking diversity of practice with respect to the allowances made to the various iron and steel industries or to their plant railways that are described on the record before us. Allowances in the amounts above mentioned are made to only five of these industries, and no allowance whatever is made in the case of nine other industries that manufacture iron and steel. In the case of seven of the plant railways mentioned of record 10 cents a ton is paid on inbound material and 15 cents a ton on outbound manufactured products; in another case, allowances of 10 cents on all material, both inbound and outbound. In two cases the allowance is from \$2 to \$2.50 per car on both the inbound and outbound movement and in another case it is \$2 a car on inbound traffic and \$4 on outbound cars. At three of the industries there is no allowance, but all switching service between the interchange point and the points of loading and unloading within the plant is performed by the line carriers without charge. Regardless of the form and the extent of these allowances the fact remains, and is clearly established of record, that they grew out of the competition of the carriers for the traffic, and whatever their original purpose their present result in effect is a contribution by the line carriers that relieves the industry of what is essentially a part of the cost of manufacture. The whole practice results in undue preferences and unlawful discriminations, and the allowances themselves we find to be unlawful on general grounds.

GENERAL OBSERVATIONS.

A full understanding of these matters, resulting from a careful examination of the record, impresses us with the inherent unlawfulness of this relation between large industries and the line carriers, built up upon the fiction that their plant railroads are servants of the shipping public, and therefore perform a service of transportation for the proprietary industries for which they may be compensated by the line carriers out of the rates. The practice has grown step by step until, by reason of the immense drain upon the revenues of the line carriers, it has now become a burden of substantial proportions upon the general shipping public. The primary purpose of the act to regulate commerce, as the courts have often said, was to strike down undue preference and favoritism, and a large part of our labors is devoted to complaints of that nature. The cost to the line carriers of these contributions by them in money and services, per diem reclaims, and demurrage exemptions, to the few favored shippers shown on this record does not appear. It has been estimated at not less than \$15,000,000 a year, and this we regard as conservative.

As we have just indicated, these practices were not suddenly devised in their present form but are more or less the result of a process of development. The traffic of these industries is so enormous as to make it a facile instrument for forcing concessions out of the line carriers; and when one line has yielded to these influences, the others serving the same industry must necessarily pay the same price or lose their share of the tonnage offered for carriage by the industry. In that manner the practice has spread from industry to industry; and the varying forms by which it is surrounded and under which it is conducted at the different plants are simply a cloak and device to give it the color of legality. It was admitted of record by counsel for many of the more important of these iron and steel companies that the trunk lines would be entirely within their legal rights if they abandoned the allowances now being paid to some industries and abandoned the services now being performed without charge for other industries. What we decide upon the testimony adduced is that these practices are unlawful in themselves because they are rebates, in fact and in effect, and also give undue and unreasonable preferences and advantages to the industries so favored and work undue and unreasonable prejudice and disadvantage to shippers in the same business who do not receive any such allowances or rebates and who do not receive the benefit of any such services. And we hold further upon the record that the form in which these plant facilities are organized and operated is an unlawful device adopted by the industries for the purpose of securing rebates from the published rates and

rebates in service and other undue and unreasonable advantages forbidden by law.

As we have heretofore stated, these matters were voluntarily brought to our attention by a joint committee of the trunk lines and the steel corporation and were submitted for our consideration on the understanding that the conclusions reached would be accepted both by the carriers and by the industries. Under these circumstances it seems to be unnecessary at this time to enter an order; we assume that the trunk lines and the industries will at once adjust their practices in conformity herewith. We are warranted also in assuming that there will be no effort, through trackage rights and similar devices, to continue in another form the relations which we here declare to be unlawful. It may be well to add that all questions that may arise or be suggested under section 15 of the act are reserved for consideration upon the request of the parties in interest.

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Of this amount the shipper of the inbound material was charged \$2,880 on account of inferior material shipped in and the steel company paid the balance, \$7,037.

The slag from the open-hearth furnace is utilized by the steel company for enlarging its property by filling in the river bank to the established harbor line. Clean ashes and other refuse material are taken out by the Pittsburgh & Lake Erie without charge, but refuse such as brickbats and excavated materials charged for at tariff rates.

At the time of the hearing these railroad tracks were operated as a bureau of the industry; subsequent to the hearing the Monessen Southwestern Railway Company was incorporated by the industrial company and took over a part of the tracks; this new line has filed a tariff with the Commission under which allowances are to be paid by the Pittsburgh & Lake Erie to the industrial railroad of \$2.25 per car on ore, \$1.75 on coke and \$1.60 on limestone, inbound. No allowances are to be paid on outbound traffic.

BETHLEHEM STEEL COMPANY.

Here we have an example of an industry of great magnitude that maintains a substantially built and well-equipped plant railway which it operates as a department of the industry. It is frankly admitted to be necessary in the economical operation of the plant and from the beginning it has been used and considered by the company simply as a plant facility. The steel company has had the benefit of no allowances or divisions out of the rates of the trunk lines that serve its works; and the cost of operating its plant railway, like the cost of other facilities used in its manufacturing processes, has entered into and been regarded as a part of the general manufacturing cost of the company. The case is one of special and peculiar interest not only by reason of the extent of its industrial railroad and its equipment in cars and locomotives but because the plant railway is in the process of transition; from being a plant facility without any allowances out of the published rate it is about to enter the class of so-called industrial carriers. In other words, the Bethlehem Steel Company has now organized a railroad company under the state laws, and it proposes, after having assigned its plant tracks and equipment to this company, to claim divisions out of the trunk line rates on the theory, advanced by other steel companies in justification of the divisions received through their industrial railroads, that the plant railway through its incorporation becomes a public carrier and its service for the steel company a service of transportation. In view of the pendency of this proceeding these plans have not yet been consummated, but are held in abeyance until the questions before us here are disposed of by the Commission.

It is well to add that the Bethlehem Steel Company has not heretofore incorporated an industrial railroad company to do this work for it because it has regarded that course as a mere device for accomplishing what in principle is unlawful. This is frankly stated of record. It has now caused such a company to be incorporated and is prepared to turn over to it all the company's plant tracks and equipment in order to be in a position to claim divisions out of the rates; it has arranged to change its policy in that respect only because the company is in strong competition with other great steel companies and feels the necessity for the future of enjoying any advantage out of the rates of the trunk lines that other steel companies have had and hope to continue to have through these means.

The Bethlehem Steel Company operates at South Bethlehem, in the state of Pennsylvania, a modern steel plant, which is said to be the largest individual plant in this country. It consists of blast furnaces, open-hearth furnaces, rolling and structural mills, foundries, machine shops, and various other departments for the production of steel and steel products. The furnaces have a capacity for producing about one million tons of iron and steel annually, and the other departments have an output of about 1,700,000 tons of finished product annually. The various buildings and facilities cover about 530 acres, and the plant employs about 9,500 men when running to its full normal capacity.

In aid of its industrial operations the steel company maintains and operates 49.95 miles of standard-gauge tracks connecting the various buildings with each other and with the tracks of the Lehigh Valley and Philadelphia & Reading railroads, which adjoin the property line of the plant. It has 20 standard-gauge locomotives and 349 standard-gauge cars. With the exception of a special gun car and an occasional locomotive leased to one of the trunk lines, none of the equipment goes off the tracks of the steel company. In addition to the standard-gauge tracks there are 8.32 miles of narrow-gauge tracks, 15 narrow-gauge locomotives, and 247 narrow-gauge cars used exclusively for handling material between the different departments of the plant. There is a third rail on certain of the standard-gauge tracks, which extends the narrow-gauge system 5.25 miles, making a total available trackage for that service of 13.57 miles. The tracks of the steel company have direct connections with the tracks of the Philadelphia & Reading and the Lehigh Valley railroads and an indirect connection with the Central Railroad of New Jersey by a switching arrangement between that line and the Philadelphia & Reading. The tracks of both the Lehigh Valley and Philadelphia & Reading parallel the plant property and immediately adjoin it. The Lehigh Valley delivery yard at the east end of the plant is

at the foot of a hill. At the top of the hill is the steel company's receiving yard. All service in the movement of cars between the two yards is performed by the Lehigh Valley engines. The cost of the railroad facilities is not stated on the record, but the engineer who testified for the steel company stated the value of the standard-gauge system, on the basis of the cost of reproduction, at \$1,818,609 for the tracks and \$210,980 for the equipment, a total of \$2,029,589; with the inclusion of the narrow-gauge tracks and equipment the total value of these facilities was said to be \$2,769,520.

The railroad facilities of the steel company include interchange tracks at the trunk line junctions, classification and storage yards at various parts of the plant, with a capacity for the storage or standing of an aggregate of 925 cars. There is a shipping yard with an area of 16 acres, entirely covered with overhead cranes, which makes it possible to move material from one part of the yard to another for assembling at the loading points without the use of railroad facilities; there is also a device for simplifying the handling of outbound freight, which reduces the actual movement by rail. In this yard there is an aggregation of tracks and sidings for the placing of cars for outbound loading.

In addition to the service of handling material between the various departments of the plant and the removal of the slag, ashes, and other waste material to the dumping grounds the steel company with its own power switches the cars of inbound coal, coke, ore, limestone, and other material from the point where they are received from the delivering trunk line to the various parts of the plant where the material is to be used or stored; it also switches the cars of outbound manufactured product from the shipping yard, or directly from the loading point at the mill, to the point of delivery to the trunk lines. The distance covered by these movements varies from 900 feet to 6,000 feet. There is an arrangement with the connecting trunk lines, which is more or less customary in this territory, known as the reciprocal delivery or interchange arrangement, under which the steel company's power goes into the trunk line yards and the trunk line power goes into the steel company's yards, as may be convenient at the time; but the general practice in this case is that the inbound loads are delivered by the trunk lines at the steel company's yards and the outbound loads are delivered by the steel company into the trunk line yards.

Unlike the conditions prevailing in the majority of cases, the blast furnaces at the Bethlehem steel plant do not require exactitude of service in respect of the coke, ore, and limestone supplies. The bins at the blastfurnaces from which the coke is served to the furnaces have a capacity sufficient to run the furnaces for 10 or 12 hours; the ore



and limestone are handled by independent mechanical arrangement, and are not dependent on railroad service. The difference in this regard between the Bethlehem plant and other plants is due to the excellence of its blast-furnace equipment and arrangements. No special service is necessary in connection with the cast house, except that cars must be at hand when needed.

The total traffic interchanged with connecting trunk lines and handled by the motive power of the steel company for the year 1911 was 98,761 loaded cars, weighing 3,214,219 tons, and 112,755 empty cars. In addition there were 8,529 carloads of inbound coal, or 337,546 tons, handled by the power of the Lehigh Valley direct to the pumping plant, situated on the north side of the Lehigh Valley tracks, near the river. These cars were not handled by the locomotives of the steel company, but were switched and placed for unloading by the Lehigh Valley without additional charge. On this tonnage the Bethlehem Steel Company, as heretofore stated, receives no terminal allowances whatever from the trunk lines. If an allowance of 10 cents per ton had been made on the 2,013,111 tons of inbound traffic for the year 1909, it would have yielded the steel company a revenue of \$201,311.10. The outbound traffic during the same year amounted to 480,891 tons. A 15-cent allowance on that tonnage would have yielded the steel company \$72,133.65. This would have made a total income for the year 1909 on all its inbound and outbound traffic of \$273,444.75. Applying the same allowances to the inbound and outbound tonnage for the years 1910 and 1911, the gross revenue for 1910 would be \$299,412.35, and for 1911, \$347,136.80, a grand total for the three years of \$919,993.90. It is stated that if the allowances had been made to the Bethlehem Steel Company that are made to the industrial railroads serving iron and steel industries in the Pittsburgh district of 10 cents per ton on inbound raw material and 15 cents per ton on outbound manufactured product it would have amounted in the aggregate to 65.07 cents per ton of finished products shipped out by the Bethlehem Steel Company during the three years and, in effect, would have reduced the cost of manufacture to that extent.

At the time of the enlargement of the plant in 1906 there was a tentative understanding between the steel company and the connecting trunk lines to the effect that the plant would be placed and kept upon a basis of relative equality, as to freight rates and other railroad matters, with the steel industries in Pittsburgh, Buffalo, Cleveland, and other districts; it was agreed, among other things, that the railroad tracks of the steel company would be assigned to an incorporated company, but the arrangement failed of consummation because of certain rulings of this Commission relative to the allowances to industrial railroads. In furtherance of the plan, however, the steel com-

ppany on April 12, 1910, incorporated the Philadelphia, Bethlehem & New England Railroad, with the ultimate intention of turning over all the tracks of the steel company to the new corporation. This has not been done, but the new corporation built a line from the connection with the Bethlehem Steel Company's tracks at the west end of the plant to the plant of the Lehigh Coke Company, now in course of construction, a total trackage of 3.44 miles.

The steel company has no interest in this coke plant, although the ground on which it stands was purchased from the steel company. The coke company will supply practically all the coke required at the steel plant, but the steel company will supply the coal for producing the coke. The coke company therefore bears substantially the same relation to the steel company that the Solvay plants do at other steel works, and to the same extent it is a facility of the steel company and results in material economy of manufacture. For switching the cars between their junctions and the coke plant the trunk lines have agreed to make an allowance to the incorporated road of \$2.50 per car, subject to certain limitations of revenue and weight. The coke plant, when completed and in operation, will have a capacity for 4,000 tons of outbound product daily and will require 5,000 tons of inbound material daily, a total movement of about 3,000,000 tons a year. It is stated that if the Philadelphia, Bethlehem & New England Railroad should take over the operation of the terminal tracks of the Bethlehem Steel Company and perform all service for both the steel company and the coke company, the business incidental to the coke plant would be 50 per cent of the whole; this, however, includes the movement of the inbound coal supplied by the steel company and also the movement of the coke from the coke plant to the furnaces of the steel company.

It is interesting to note that a witness for the Lehigh Valley Railroad testified that he knew no reason why the interchange service performed by the power of the Bethlehem Steel Company could not be performed equally well by the Lehigh Valley for the steel company; but it was stated by the principal witness for the steel company that the connecting trunk lines had been requested to perform the switching service themselves or to put the steel company on a parity with other steel industries served by their own industrial railroads; this request was conditioned upon the railroad operations within the plant being placed under the control of a single directing head both as to the internal work and the interchange switching.

In this case it is frankly conceded that the railroad facilities owned by the industry are a part of the equipment necessary for the economical operation of the plant, these facilities providing the means for prompt distribution of material and supplies to the various parts of the plant. It is also stated on the record that many other

labor-saving devices are employed for the prompt loading and unloading of cars and the transfer of material between the different parts of the plant, all tending to reduce the cost of production. The record makes it entirely clear that a plant railway, both narrow gauge and standard gauge, is now regarded as a part of the necessary plant equipment of steel works, blast furnaces, and other industries operated on an extensive scale.

CAMBRIA STEEL COMPANY.

In this case the conditions are similar in many particulars to those existing at the Bethlehem Steel Company's plant and described in the preceding pages. The only substantial difference between the two plants is that this industry receives allowances from the connecting trunk lines on inbound ore, coke, and limestone, while in the case of the Bethlehem Steel Company no allowances are received.

The Cambria Steel Company has a capital stock of \$50,000,000. Of the \$45,000,000 issued and outstanding the Pennsylvania Company and the Philadelphia & Reading Railway own \$22,504,100. The plant is at Johnstown, Pa., and covers an area of approximately 392 acres. The various departments consist of 8 blast furnaces, 4 bessemer converters, 25 open-hearth furnaces, 4 blooming and slab mills, 10 rail, structural plate, and billet mills, 14 merchant bar mills, 1 wire-rod mill, 2 locomotive and car-axle departments, 1 steel-car shop, 1 bridge structural shop, 1 bolt and nut plant, 2 splice-bar plants, 5 shops for finished-steel product, 7 shops for finished-wire product, 10 shops for construction and repair work, and 372 by-product coke ovens. At the time of the hearing the plant employed about 17,000 men. As a facility for its manufacturing operations the steel company has 94.26 miles of standard-gauge track consisting of about 500 sidings in and around the various departments of its plant for the placement of cars.

The equipment consists of 35 standard-gauge locomotives and 1,089 standard-gauge cars. This equipment is used exclusively in the plant service and does not go upon the tracks of the trunk line. The railroad system of the steel company was incorporated December 5, 1900, as the Cambria Terminal Railway Company and under this name was operated until May 15, 1906, when the railroad corporation was dissolved through court proceedings and the property, real estate, right of way, and all assets of the railway company were sold and conveyed back to the steel company. It is not clear on the record whether or not the tracks were incorporated for the specific purpose of obtaining right of way through condemnation proceedings, but the railroad company did exercise its right of eminent domain in two instances in which proceedings were instituted to obtain about 11

pany on April 12, 1910, incorporated the Philadelphia, Bethlehem & New England Railroad, with the ultimate intention of turning over all the tracks of the steel company to the new corporation. This has not been done, but the new corporation built a line from the connection with the Bethlehem Steel Company's tracks at the west end of the plant to the plant of the Lehigh Coke Company, now in course of construction, a total trackage of 3.44 miles.

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INDUSTRIAL RAILWAYS CASE.

are employed for the prompt loading and unloading of material between the different parts of the plant, all tending to reduce the cost of production. The record of the industry shows that a plant railway, both narrow gauge and standard gauge, is now regarded as a part of the necessary plant equipment of steel works, blast furnaces, and other industries operated on an extensive scale.

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The Cambria Steel Company has a capital stock of \$50,000,000. Of the \$45,000,000 issued and outstanding the Pennsylvania Company and the Philadelphia & Reading Railway own \$22,504,100. The plant is at Johnstown, Pa., and covers an area of approximately 300 acres. The various departments consist of 8 blast furnaces, 4 basic-iron converters, 25 open-hearth furnaces, 4 blooming and slab mills, 10 rail, structural plate, and billet mills, 14 merchant bar mills, 1 wire-rod mill, 2 locomotive and car-axle departments, 1 steel-car shop, 1 bridge structural shop, 1 bolt and nut plant, 2 splice-bar plants, 5 shops for finished-steel product, 7 shops for finished-wire product, 10 shops for construction and repair work, and 372 by-product coke ovens. At the time of the hearing the plant employed about 17,000 men. As a facility for its manufacturing operations the steel company has 94.26 miles of standard-gauge track consisting of about 500 sidings in and around the various departments of its plant for the placement of cars.

The equipment consists of 35 standard-gauge locomotives and 1,089 standard-gauge cars. This equipment is used exclusively in the plant service and does not go upon the tracks of the trunk line. The railroad system of the steel company was incorporated December 5, 1900, as the Cambria Terminal Railway Company and under this name was operated until May 15, 1906, when the railroad corporation was dissolved through court proceedings and the property, real estate, right of way, and all assets of the railway company were sold and conveyed back to the steel company. It is not clear on the record whether or not the tracks were incorporated for the specific purpose of obtaining right of way through condemnation proceedings, but the railroad company did exist in instances in which procedure was instituted to obtain about

acres of right of way. It is stated that the operation of the railroad during the period of its incorporation did not vary in any essential respects with the method of operation as a department of the steel company. In addition to the standard-gauge tracks, the steel company owns and maintains a system of about 13 miles of narrow-gauge tracks, which it uses exclusively for the movement of material between the various departments of the plant. In the operation of these tracks it has 27 narrow-gauge locomotives and 400 narrow-gauge cars. The witness stated that about 400 of the employees of the steel company are engaged in the maintenance of equipment and tracks and in the service of the railroad department. In a statement filed of record the value of the standard-gauge railroad property is stated to be \$2,668,777.80, of which \$1,787,127.80 is assigned to right of way, tracks, bridges, and buildings and \$881,650 to equipment. The trunk line connections are the Baltimore & Ohio and the Pennsylvania railroads. The tracks of the Pennsylvania parallel and approach the plant at several points, but the tracks of the Baltimore & Ohio do not extend to the plant, being reached by the extension of the industrial tracks to an interchange point in the immediate vicinity of the plant.

It is stated of record that the steel company does not hold itself out as a common carrier, but it is admitted that it formerly served certain individuals at its own discretion. This outside service, so far as it related to interstate traffic, was discontinued about 10 days previous to the hearing. In 1911 the outside traffic amounted to 1,221 cars, from which a revenue of \$6,105 was derived. This service was performed for M. L. Williams & Company, Penn Traffic Company, Citizens Light, Heat & Power Company, Cambria Fertilizer Company, Barrett Manufacturing Company, Johnstown Water Works, and a number of smaller concerns, in none of which the steel company has any interest or affiliation. For switching their traffic the steel company made a charge of \$5 per car on certain cars, of which \$2.50 per car was absorbed by the Pennsylvania, the balance being paid by the shipper or consignee. The arrangement under which the Pennsylvania absorbed a part of the switching charges was also discontinued about 10 days before the hearing.

During the year 1910 there was a total of 232,691 cars handled, of which 111,271 were inbound and 121,420 outbound. Of the inbound cars 92,031 were loaded and 19,240 were empty cars. Of the outbound 47,071 were loaded and 74,349 were empty cars. For the year 1911 a total of 178,954 cars were handled, of which 88,613 were inbound and 90,341 outbound. Of the inbound cars 65,001 cars were loaded and 23,613 were empty cars. Of the outbound 44,895 were loaded cars and 45,446 were empty cars. Of these

totals, 193,159 cars in 1910 and 135,757 in 1911 were interchanged with the Pennsylvania, and 39,532 cars in 1910 and 43,197 in 1911 were interchanged with the Baltimore & Ohio. During these two years the total approximate tonnage handled was 9,800,000 tons, of which 25 per cent was inbound material, 15 per cent outbound manufactured products, and the balance, 60 per cent, interplant service. In 1911 there were 29,944 cars of ashes and cinders handled, of which 14,492 cars were switched to the dumping ground of the steel company, 12,836 cars were shipped out over the Pennsylvania, and 2,616 cars over the Baltimore & Ohio. The record does not disclose the purpose of shipping out the ashes and cinders, but it is probable that the material was used for ballast on the tracks of the trunk lines.

The Cambria Steel Company's railroad is not a member of the per diem agreement and pays no per diem and receives no reclaim. It interchanges cars with the trunk lines under the so-called average agreement. Demurrage begins to run against the cars 48 hours from the first 7 a. m. after being placed on the interchange tracks. The Pittsburgh rate territory extends as far east as Johnstown, and the same furnace allowances are paid as in Pittsburgh proper. The steel company receives terminal allowances by published tariffs of the trunk lines on inbound material; from the Pennsylvania Railroad of \$2.25 per car on ore, \$1.75 on coke, and \$1.60 on limestone; from the Baltimore & Ohio it receives \$1.75 per car on coke and \$1.60 on limestone. The Baltimore & Ohio does not handle any of the inbound ore. During the year 1911 the allowances amounted in the aggregate to \$79,973.70 from the Pennsylvania Railroad, and \$16,941.10 from the Baltimore & Ohio, a total of \$96,914.80. No allowances are made by either of the trunk lines on outbound business.

The total cost of operating the railroad department of the steel company in the year 1911, not including anything for the interest on the investment or overhead charges, was \$536,865.12, of which about 40 per cent, or \$215,000, was the cost of switching between the plant and the connecting carriers. The entire cost of operation for the year 1911, including the internal work, as well as the interchange service with connecting carriers, amounted to about 5.4 cents per ton of traffic handled.

In this case the principal witness stated that he saw no reason why the trunk lines could not place the cars at the point of unloading with their own power. This would involve detailed dispatching and the trunk lines would have to provide equipment suitable for the degrees of curvature on the industrial tracks; otherwise the character of the service would not differ from that performed by the trunk lines for other industries that do not have their own power. The curvature

of the industrial-plant tracks is very sharp, and there would have to be a special power for that kind of work, but the volume of the business is of sufficient magnitude to justify the maintenance of that kind of power by the trunk line at that point so as to give the service. It was the opinion of the witness that the steel company was not justified in doing the work at such a large cost when it was not reimbursed by the trunk line.

REPUBLIC IRON & STEEL COMPANY.

The record in this case is of peculiar interest, because it discloses an entirely different form of railroad service than that usually conducted in connection with iron and steel industries, the switching the cars interchanged with the contiguous trunk lines being performed under the so-called pooling arrangement, whereby the entire cost is divided between the interested trunk lines on the basis of the number of cars handled for each.

The Republic Iron & Steel Company has three separate plants located on the banks of the Mahoning River, at Youngstown, Ohio—the Brown-Bonnell Bessemer plant and the Hazelton furnace, on the south side of the river, and an open-hearth furnace, tube works, and a plate mill on the north side of the river. The plants on each side of the river are connected by a bridge owned by the steel company. There is an aggregate of 8,000 men employed in the various departments of the plant. As a facility in the manufacturing operations the steel company has between 35 and 40 miles of standard-gauge tracks and 5 locomotives. There is also a system of narrow-gauge tracks at each of the plants. All the tracks are located inside the plant inclosures, with the exception of the hot metal tracks connecting the plants, which are over a separate right of way. At the Brown-Bonnell plant there is a storage capacity for about 150 cars and at the Hazelton furnace for about 400 cars.

The trunk line connections are the Baltimore & Ohio, Pittsburgh & Lake Erie, and the Erie railroads. The Lake Shore also reaches the plant by means of a switching arrangement over the Erie or the Pittsburgh & Lake Erie tracks. All interchange switching at the plants is performed, as stated, under the so-called pooling arrangement between the trunk lines, which is the custom in the Youngstown district. That is to say, the locomotive is furnished by one of the trunk lines and the entire expense of the service is divided between the several trunk lines on the basis of the number of cars handled for each. The service is absolutely under the jurisdiction of the industry whose superintendent controls the locomotives and cars of the trunk lines while inside the plant. The locomotives of the industry are used

exclusively for intermill work, such as switching material from one plant to another and the movement of hot metal.

A statement prepared from the records of the participating trunk lines shows that for the year ending June 30, 1911, there was a total interchange movement of 37,407 loaded cars at the Brown-Bonnell plant, and the total cost divided between the trunk lines amounted to \$56,841.23, or an average of \$1.54 per car. At the Hazelton works, for the same period, 37,727 cars were moved at a cost of \$47,488.39, or an average of \$1.25 per car. This estimated cost apparently does not include interest on the track investment or the maintenance of tracks. The cars are spotted or picked up at any desired point within the plant without expense to the industry; the only expense to the industry is for the maintenance of its own tracks.

The Republic Iron & Steel Company is not a member of the per diem agreement, but interchanges cars with the trunk lines under the average agreement and is allowed 48 hours free time; the plant receives credit for the cars released within the first 24 hours of its free time, and the balance of the free time is applied against any overtime on other cars up to and not exceeding 7 days. If a car is ordered and the trunk line engine does not bring it in the detention is charged against the trunk line, and after the car is spotted in the plant the industry is responsible for the detention. For the year ending June 30, 1911, the demurrage charges paid to the trunk lines amounted in the aggregate to only \$421.

It is stated of record that there is no substantial difference between the service performed at this plant and the service performed by the industrial railroads of other plants included in this record, except that in the last analysis in the Youngstown district the industry pays the full rate on whatever commodity is moved; its allowances do not come out of the rates but are in the form of a plant service by the trunk lines.

YOUNGSTOWN SHEET AND TUBE COMPANY.

In this, as in the previous case, practically all the interchange switching service at the plant is performed under the so-called pooling arrangement by which the trunk lines join in the expenses on the basis of the number of cars handled for each.

The Youngstown Sheet & Tube Company has a large plant located on the north side of the Mahoning River, four or five miles from Youngstown, Ohio. It covers approximately 130 acres and manufactures pipe, steel sheets, and wire nails. It also has a blast furnace but does not make pig iron for the market. The plant employs about 7,000 men.

As a facility in the industrial operation there are 23.79 miles of standard-gauge and 5.5 miles of narrow-gauge tracks located in and
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around the plant. The equipment consists of 2 standard-gauge and 9 narrow-gauge locomotives. One of the standard-gauge locomotives is used exclusively for intermill work and the other for switching hot metal. The trunk line connections are the Pennsylvania, Pittsburgh & Lake Erie, and the Baltimore & Ohio. Traffic is also interchanged with the Erie and Lake Shore & Michigan Southern by means of an intermediate service by the Pittsburgh & Lake Erie, which connects with the tracks of the industry at both the north and south ends of the plant.

All the interchange switching between the points of placement within the plant and the trunk lines is performed by one of the trunk lines under the pooling arrangement. A very small portion of the plant switching or the movement of cars from one part of the plant to another is performed by the trunk line engine, but for such service a charge is made against the industry of 15 cents per ton with a minimum of 20 tons per car irrespective of the distance, which ranges from 50 feet to $1\frac{1}{2}$ miles. This service is performed by the trunk line engine only when the power of the industry is not available. The trunk line engine is under the exclusive control of the industry while working within the plant inclosure. The total cost of the interchange switching is divided between the interested trunk lines on the basis of the number of cars handled for each. It is stated of record that during the year ending June 30, 1911, there was a movement of 47,320 loaded cars inbound and 19,090 outbound, of which 6,316 cars were weighed, making a total movement of 72,726 cars; the cost divided among the trunk lines for that work amounted to \$90,979.23, or about \$1.25 per movement. This amount of \$1.25 per movement is based on the loads only, which includes the empty movement. The amount of cost to be divided between the participating trunk lines is based on the wages of the crew and the engine cost, arbitrarily fixed at \$1.15 per hour, which includes fuel and all engine repairs.

VALLEY CONNECTING RAILROAD COMPANY.

We have elsewhere referred to the pooling arrangement that is practiced in the Mahoning and Shenango Valleys in Ohio and Pennsylvania in connection with switching at steel industries. At the hearing the attention of the Commission was directed to the practice of the trunk lines at the plant of the Stewart Iron Company in Sharon, Pa. This company was not represented at the hearing, but in view of the fact that the Commission is engaged in this proceeding in a general investigation of industrial railroads serving industries, its attorney asked permission to put in evidence the contract which shows the whole arrangement with reference to the switching at this plant, which has a system of yard tracks and sidings operated under the

name of the Valley Connecting Railroad, and connecting the plant with the Erie, Pennsylvania, and Lake Shore railroads. The contract provides that the industry shall furnish the necessary locomotive power at a specified rental, and at the end of each month the cost of doing the switching, both interworks and interchange, including the rental for the locomotive, shall be divided between the three trunk lines, and the industry in proportion to the number of cars handled for each. The result of this arrangement is that the industry gets its cars spotted at the points of loading or unloading within the plant without expense, and pays the actual cost of the internal switching, such as the movement of material from one part of the plant to another in connection with the manufacturing operations.

It will be noted that the practice here differs from that described for the Republic Iron & Steel Company and the Youngstown Sheet & Tube Company, in that at the two plants last named the pooling arrangement applies only to the interchange switching, while at the plant of the Stewart Iron Company it includes both interchange with the trunk lines and internal switching for the plant.

WICKWIRE BROTHERS.

This company has a plant at Cortland, N. Y., for the manufacture of nails, wire, wire fencing, and similar iron and steel products and is in general competition with the American Steel & Wire Company and others engaged in that business. The industrial company has an aggregation of 3.72 miles of track, located in and around the plant, which it operates with three locomotives. Under a written agreement the Delaware, Lackawanna & Western and the Lehigh Valley supplied the rails and ties and constructed at their joint expense practically all the tracks on the land of the industry, but granted the industry the right of purchasing the rails and ties at any time at an appraised valuation.

The general character of service performed with the power of the industry consists of switching empty and loaded cars between a designated point of interchange with the trunk lines and the points of placement within the plant. The average haul is approximately 2,000 feet. No allowances are made to the industry by the trunk lines. At the time of the hearing no service was performed for outside industries. The industry maintains an overhead trolley for handling the ingots from the open-hearth furnace to the blooming mill, where they are reduced by rolls to billets, the latter being then transported to the rod mill in hand trucks.

During the year ending June 30, 1911, there were 5,760 carloads interchanged with the trunk lines, of which 3,575 cars were inbound and 2,185 outbound. The interchange takes place under the de-
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murrage rules. Prior to November 21, 1902, the trunk lines performed the service that the industry now performs with its own power, and it is stated that no compensation of any kind has been received from the trunk lines in the way of reduced freight rates, so that the present practice is more costly to the industry by the amount required for maintaining the railroad service. For the year ending June 30, 1911, it cost the industry approximately \$25,000. It is admitted that there would be no objection to the trunk lines performing the switching if it could be done as satisfactorily as the industry is now doing it, but it would be difficult for two trunk lines to perform the switching at one plant without creating more or less confusion and delay. It would be satisfactory if one or the other trunk line would perform all the service by an arrangement between them, provided prompt service is given.

WHEELING STEEL & IRON COMPANY.

This company operates a bessemer steel plant and tool works at Benwood, W. Va., in connection with which it has two blast furnaces at Wheeling, W. Va., and one blast furnace at Martins Ferry, Ohio. The three furnaces have an aggregate capacity of 750 tons per day. The two furnaces at Wheeling are in separate locations, and are known as the Belmont department and the "top" department. At the "top" department there are 2.4 miles of railroad track and 1 locomotive; at the Belmont department 1.3 miles of track and 1 locomotive; at the Martins Ferry plant there are 2.3 miles of track and 1 locomotive; and at the Benwood plant 4.7 miles of track and 3 locomotives, a total of 10.7 miles of track and 6 locomotives. At the "top" department the tracks connect with the Pennsylvania lines, at the Belmont department with the Pennsylvania and the Baltimore & Ohio, at the Martins Ferry plant with the Pennsylvania, Baltimore & Ohio, and Wheeling & Lake Erie, and at the Benwood plant with the Pennsylvania, Baltimore & Ohio, and the Wheeling Terminal.

The general character of service performed at each of these plants consists of switching empty and loaded cars between connecting trunk lines and the points of placement within the plants, and also the internal switching at each of the plants. The average distance covered by the interchange switching is about 500 feet. No divisions or allowances are received from the trunk lines. Cars are interchanged at each of the plants under the demurrage rule.

Refuse from the "top" department is loaded in cars and dumped along the river bank inside the harbor line, both on the property of the steel company and the property of others. At the Belmont and Martins Ferry plants the slag is granulated and removed by the trunk lines without charge to the steel company.

During the year 1911 the traffic interchanged with the Pennsylvania amounted to 1,030,421 tons, with the Baltimore & Ohio 228,542 tons, and with the Wheeling & Lake Erie 21,913 tons, a total of 1,280,876 tons.

BENWOOD & WHEELING CONNECTING RAILWAY.

In this case we have an incorporated railroad that has no tracks of its own; its entire operation is over tracks it leases from the industry by which it is controlled. The only physical property that is owned by it is the equipment, consisting of 7 locomotives and 2 cars. The operation of the tracks in the name of an incorporated railroad company is for the apparent purpose of giving the semblance of a transportation feature to what are essentially plant operations.

The National Tube Company, a subsidiary company of the United States Steel Corporation, has a large plant at Benwood, W. Va., consisting of blast furnaces, rolling mills, steel works, and a tube mill; it has an aggregate capacity of about 910,000 tons per annum of manufactured products; the buildings and facilities cover an area of about 80 acres and in the entire industrial operation an average of from 2,300 to 2,500 men are employed.

As a facility for the industry the tube company constructed, and for some time operated with its own power, a system of yard tracks and sidings connecting various departments of its plant with each other and with the contiguous trunk lines. In January, 1900, the Benwood & Wheeling Connecting Railway Company was incorporated with an authorized capital stock of \$1,000,000, of which only \$100,000 has been issued and turned over to the tube company. It is not stated of record what consideration was given by the tube company for the \$100,000 capital stock, but it probably represents the value of the facilities turned over to the industrial line for operation.

The incorporated railway has no tracks of its own, but operates a total of 11.90 miles of standard-gauge tracks owned by the tube company, a part of which it leases; another part it operates under some form of agreement. All these tracks are inside the plant inclosure. The lease under which they were first operated provided for the payment by the short line to the tube company of \$10,000 a year and for the maintenance, repair, and renewal of all the tracks by the industrial line. The lease further stipulated that, beginning in September, 1900, and continuing until January 1, 1906, the incorporated railway should pay to the tube company all its profits in excess of 4 per cent on the capital stock of the railway company. It is not apparent that any dividends have been paid, but it is clear that the excess of revenues over operating expenses have been turned over to

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the tube company. The payments made by the industrial line to the tube company for the period from September, 1900, to December 1905, inclusive, amounted in the aggregate to \$43,459.65. In 1906 and 1907 payments of \$10,000 for each year were made. In 1908 and 1909, apparently under a new lease, the payments amounted to \$20,000 for each year. The present lease is dated July 1, 1909, and provides that it shall be in force for a period of one year from date and from year to year thereafter unless terminated by either party on three months' written notice; it provides also for the payment by the railway to the tube company of an annual rental of \$10,000, payable monthly; it also provides that the railway shall perform all internal switching for the tube company at the rate of \$1.50 per car, irrespective of the length of the switching movement.

These facts disclosed on the record indicate that for the period from 1900 to 1910, inclusive, the industrial line has paid to the tube company for the lease of the tracks alone an aggregate of \$133,459.65, in addition to which it has paid the entire cost of maintenance and renewals. The only physical property owned by the incorporated railway is the equipment, which consists of seven locomotives and two flat cars. The total value of the railway property, less depreciation, is stated to be \$74,059.85, of which the tracks leased from the tube company represent only \$31,458.58.

The tracks of the industry which are leased to the incorporated railway connect with the tracks of the Baltimore & Ohio, the Pittsburgh, Cincinnati, Chicago & St. Louis, and the Wheeling Bridge & Terminal Railway. The Baltimore & Ohio tracks adjoin the property on the east side of the plant and the tracks of the other two trunk lines adjoin the property line of the industry on the west side of the plant. The service now performed in the name of the industrial railway is the switching of empty and loaded cars between the several departments of the plant and the interchange points with the connecting trunk lines. The haul covers a distance of from one half mile to one mile. This work includes about 70 per cent of the entire service performed by the industrial line, about 30 per cent being intermill service for the industry. This is precisely the service that the tube company performed directly for itself before it turned the facilities over to its incorporated railway company.

The only industry served by the industrial railroad other than that of the tube company is the plant of the Semet-Solvay Company, which is located on the property of the tube company. It manufactures coke and by-products and sells the coke to the tube company, the other products being sold on the market. It is not uncommon to find a Solvay plant associated with iron and steel industries, and, as in this case, it is usually located on the property of the steel company.

In this instance the Semet-Solvay Company has its own motive power, with which it performs the necessary mill switching in connection with its manufacturing plant. The only service performed for it by this industrial railroad is the switching of carloads of coal from the trunk line interchange tracks to its plant and the switching of cars of its manufactured products to the trunk line connection.

Cars of ore, coke, and limestone are hauled by the industrial railroad from the trunk line connections to the stock pile of the tube company or storage yard and later switched to the furnaces when required by the industry; the railroad movement is said to end when the material is delivered at the stock pile or storage yard, the subsequent movement being regarded as a plant service. In some instances the ore is taken from the trunk line connections directly to the furnaces.

It is stated that the only reason why the trunk line can not make direct deliveries of the ore is that it might be brought into the plant at a time when the industry is not ready to have it placed for unloading and this would entail a delay of five or six hours to the trunk line engine. At times there are from 150 to 200 cars of ore in the trunk line yard ready for delivery. In order that the furnaces may be kept in continuous operation coke and limestone must be switched to them two or three times a day. The work is done in this way to meet the requirements of the industry, and for the same reason the placing of cars must be made at stated intervals. The time and extent of the service of switching inbound material, such as ore, coke, and limestone, is largely, if not entirely, dependent upon the requirements at the furnace. The situation at both the furnaces and mills is such that the interplant service must necessarily be taken care of by the same power that brings in the cars. The service on shipments of coke is said not to end until the car is placed at the bins to be unloaded, even though it is necessary to retain the car in the yard several days; as it is impossible for the furnaces to use coke except in connection with the limestone and ore the switching and placement of cars of these materials used in manufacture must be made according to the needs of the industry.

The Benwood & Wheeling Railway is a member of the per diem agreement and is allowed four days' reclaim. The per diem begins the day the car is placed on the interchange track. For the calendar year 1911 the amount of reclaim received exceeded the amount paid for per diem by \$5,168.30. For the year ending June 30, 1911, the accrued demurrage against the tube company amounted to \$429, of which \$232 was collected from the tube company and \$197 was canceled. This is another instance of the benefit to an industry whose incorporated railroad interchanges cars with connecting trunk lines

under the per diem and reclaim arrangement. In this case the insignificant amount of demurrage paid indicates that the industry is relieved from the operation of the ordinary demurrage rule by reason of the four days' reclaim allowed to its industrial railroad, which in effect gives the industry the use of the cars for four days without charge. Under the ordinary rules an industry is allowed only two days for loading or unloading.

The industrial railroad does not receive allowances from the connecting trunk lines on either inbound material or outbound manufactured product, but an allowance of 10 cents a ton on steam coal is made by the Baltimore & Ohio. The movement of this coal over the Baltimore & Ohio tracks is entirely within the state of West Virginia. The industrial railroad makes a charge of \$1.50 per car for all other switching movements whether for the controlling industry or others. It is stated of record that beginning March 1, 1912, this charge will be increased to \$2.50 per car for the reason that the lower charge will not produce the cost of operation.

Upon these facts it is clear that no real or substantial reason exists for classifying a part of the operations of this road as a service of transportation; it would be difficult, if not impossible, to separate the part of the service it is desired to designate as interchange switching from that which is admittedly a plant service.

LEETONIA & CHERRY VALLEY RAILROAD.

The plant of the United Iron & Steel Company at Leetonia, Ohio, was originally built and operated by the Cherry Valley Iron Company, from which it was acquired by purchase. There was originally a system of $4\frac{1}{2}$ miles of yard tracks and sidings, which the industry operated with its own power as a plant facility. In January, 1910, the Leetonia & Cherry Valley Railroad Company was incorporated, with an authorized capital stock of \$14,000, the only outstanding part of which is \$1,400 issued to the United Iron & Steel Company. There are no bonds, but on the books there is due to the steel company on open account the sum of \$51,017.12. The steel company and the railroad company, however, are substantially one investment. The incorporated railroad took over the tracks and equipment of the steel company under lease, and subsequently constructed 1.60 miles of additional track. All the tracks are located in and around the plant. The industrial railroad pays to the steel company for rental of tracks, equipment, and right of way \$6,000 per annum, being 6 per cent interest on an estimated valuation of \$100,000. At the time of the hearing the property consisted of 6.10 miles of track, of which 4.50 miles were leased from the steel company and 1.60 miles were owned by the industrial road. The equipment consisted of 2 locomotives

and 6 cars owned by the industrial railroad and 35 cars leased from the steel company. The total investment in the railroad property and equipment owned is stated to be \$41,483.25. The tracks connect with the Pennsylvania Company and the Erie Railroad at the south end of the plant, and with the Erie at the north end. The only shipper served by the industrial railroad, other than the steel company, is the France Slag Company, in which the steel company has no interest but which furnishes a means for the steel company to dispose of its slag. The France Slag Company has no plant or building. It simply operates a steam shovel at the slag pile of the industry.

The service performed by the industrial railroad is the switching of inbound ore, coal, and limestone, and outbound pig iron between the plant and the trunk line connections. The coke is all manufactured at the plant. The cars of ore and limestone are switched from the interchange point to the point of unloading. The coal is switched from the interchange point to the coal bins, and is transferred thence on the narrow-gauge cars and tracks of the industry to the coke oven. There is no railroad movement of the slag or cinders, which is run into large ladles, and the ladles taken out by rope haulage and dumped. The refuse, such as flue dust and ashes, is switched to the dumping point. The outbound pig iron is first switched from the cast house to what is called the iron yard. This movement is designated as being entirely a plant movement. At the iron yard the pig iron is then loaded into railroad cars and switched to the interchange point of the Erie or the Pennsylvania. It is admitted that the service performed by the industrial railroad in the movement of inbound material such as ore, coal, and limestone is the same as that previously performed by the trunk lines. Before the industrial railroad took over the tracks, the trunk lines performed all the switching, including the movement from the cast house of pig iron, but they made a charge for the plant service of \$1 per car, regardless of weight.

During the year ending December 31, 1911, 666 cars were handled for the France Slag Company. The charge of \$2 per car for this service was absorbed by the trunk lines. During the same period 15,290 cars were handled for the steel company, of which 9,925 cars were interchanged with the connecting trunk lines, and 5,365 cars were handled in intermill switching. The industrial railroad files tariffs with the Commission, covering switching charges on miscellaneous traffic in carloads, and a tariff covering switching charges on plant movements. The charge for interchange switching is \$2 per car, which is absorbed by the trunk lines, and the charge for intermill movements is 75 cents per car, paid by the industry. The industrial railroad is not a party to the per diem agreement, the plant being subject to the usual demur-

rage rules of the Erie and the Pennsylvania. It was stated by a witness that before the operation of the tracks was taken over by the industrial railroad, a considerable amount of demurrage accrued against the industry, but that since the industrial railroad has been performing the service no demurrage has accrued.

This statement emphasizes the fact that a system of railroad tracks is a necessary facility of a large industrial operation. The saving to the industry of demurrage charges that would otherwise accrue, in many instances is a substantial item; that the item has entirely disappeared from the industrial accounts in this instance is doubtless due to the prompt distribution of cars of inbound material to the different departments or unloading points of the plant; and this prompt movement of material to the consuming point in the plant is also necessary to avoid delays to the manufacturing operations. It is stated of record that if there is any cessation in the supply of material at either the coke ovens or the furnaces there results a temporary shutdown and an inferior quality of product. Regularity of switching service is therefore a requirement of the industry and not an obligation of the trunk line.

The annual report for the year ending June 30, 1911, shows that the operating expenses, taxes, rentals, and interest exceeded the revenues by \$8,315.03, and it is stated that from the time of the organization of the industrial railroad up to January 1, 1912, the expenses exceeded the income to the amount of \$10,219.32.

LAKE TERMINAL RAILROAD.

In this as in other cases herein referred to the service performed by the industrial railroad and designated as interchange switching for the trunk lines is so inseparably connected with what is admitted to be a plant service that it is difficult to fix the line where one ends and the other commences.

The plant of the National Tube Company, served by the Lake Terminal Railroad, is located at Lorain, Ohio, and was originally constructed by the Johnson Company in 1894 or 1895. On April 1, 1898, the Johnson Company was succeeded by the Lorain Steel Company, which in 1903 also took over the Lorain Foundry Company and the Lorain Shale Brick Company. The National Tube Company and the Lorain Steel Company are both subsidiaries of the United States Steel Corporation. The Lorain Steel Company was in turn succeeded January 1, 1904, by the National Tube Company, which built additional furnaces and established and equipped various departments for manufacturing other products; so that the plant as it existed at the time of the hearing included five blast furnaces for the manufacture of pig iron, six open-hearth furnaces for pro-

ducing steel ingots, a steel mill with two converters for the manufacture of blooms, billets, rails, slabs, splices, and steel crossties, bessemer mills for the manufacture of pipe steel, a tube and pipe mill for the manufacture of wrought pipe and boiler tubes, a galvanizing plant for producing galvanized pipe and other products, and a dock for unloading ore from vessels. When in full operation the plant employs 7,700 men. The plant property is inclosed by a fence.

At the time the plant was owned and operated by the Johnson Company there was a system of yard tracks and sidings located in and around the plant, and these tracks connected with the Baltimore & Ohio and the Cleveland, Lorain & Wheeling.

The Lake Terminal Railroad Company was incorporated by Tom L. Johnson and A. J. Moxham in 1895, nearly six years before the organization of the United States Steel Corporation. The road and equipment, theretofore owned and operated as a facility of the Johnson furnace, were taken over by the Lake Terminal Railroad Company, and paid-up stock to the amount of \$2,000,000 was issued to Messrs. Johnson and Moxham in consideration for the property acquired. The Lorain Steel Company secured control of the Johnson furnace and the railroad as well in 1899, and that company sold to the Lake Terminal Railroad Company 116 freight cars for \$37,266.27. Later the National Tube Company acquired the property of the Lorain Steel Company; the tube company was in turn taken over by the Federal Steel Company, which was merged into the United States Steel Corporation in 1901.

In 1908 additional right of way was purchased from the Sheffield Land & Improvement Company and from the National Tube Company, for which an aggregate amount of approximately \$257,000 was paid. The acquirement of the right of way from the tube company did not involve the payment of money, but was consummated by the exchange of certain property, part of which was occupied by the tube company and stood of record in the railroad company, while other parts were occupied by the railroad and stood of record in the tube company; in consummating the transaction the railroad company deeded to the tube company about 120 acres of land and the tube company deeded to the railroad company about 169 acres. Under date of June 30, 1909, there was an additional transfer of property from the tube company to the railroad company which included about 96 acres of land at \$2,500 per acre, an easement over the docks and less than a mile of track thereon for \$200,000, 11.15 miles of track at \$11,215.77 per mile, the roundhouse, yard scales, car repair shop, and other facilities, 4 locomotives, 54 ore cars, 50 flat cars; the railroad company transferred to the tube company 9 slag and cinder dump cars. The net consideration paid

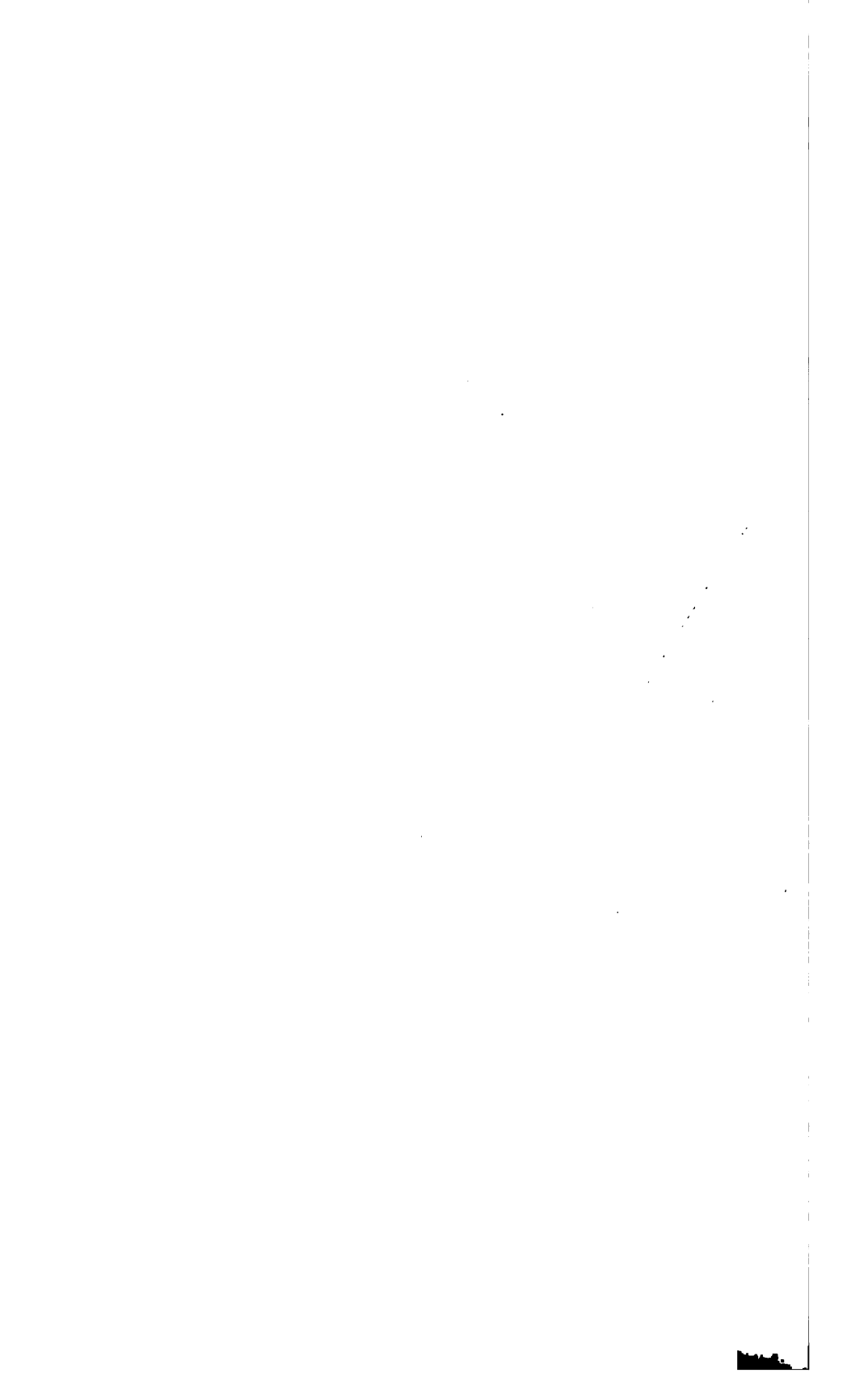
by the railroad company to the tube company was \$114,051.55. These items make the total aggregate price of the property transferred to the railroad company by the tube company \$975,976.11. The net amount was paid to the tube company by the railroad company out of the proceeds of a loan of \$1,000,000 made by the Federal Steel Company to the railroad company, bearing interest at 3 per cent per annum. The sum of \$100,000 was paid out of revenues from operation on account of this loan by the railroad company to the Federal Steel Company in December, 1911, leaving \$900,000 still due.

At the time of the hearing the Lake Terminal Railroad Company owned 33 miles of track, of which 12 miles are designated as main line and 21 miles as spurs and sidings—all located in and around the plant of the National Tube Company at Lorain. The industrial railroad also operates under lease 29 miles of track owned by the tube company, of which 6 miles are designated as main line and 23 miles as spurs and sidings, making a total operated trackage of 62 miles. For the lease of the tube company's tracks the industrial railroad pays a rental of \$50,000 a year, and these payments from 1905 to 1909, inclusive, aggregated \$250,000. During this period the tracks were maintained by the tube company. In February, 1911, a new agreement was entered into under which these tracks are maintained by the industrial railroad. In addition to the tracks owned and operated by the industrial railroad the National Tube Company owns and operates 9.16 miles of narrow-gauge tracks with 17 locomotives and 566 cars. It is stated that while the narrow-gauge road is operated exclusively as a plant facility, the tracks are maintained by the industrial railroad at the expense of the tube company. The equipment of the industrial railroad consists of 18 locomotives, 102 girder rail cars, 134 steel hopper cars, 50 steel flat cars, 56 wooden flat cars, 26 wooden gondolas, 2 tank cars, 1 pay car, and 1 scale test car. There is a wrought-iron bridge across the Black River, which, with the approaches, was purchased from the New York, Chicago & St. Louis Railroad Company in 1907 for \$70,713.77.

The trunk line connections are the Lake Shore & Michigan Southern, the New York, Chicago & St. Louis, the Wheeling & Lake Erie, adjoining the plant property at the east end, and the Baltimore & Ohio at the west end. The Baltimore & Ohio connection is inside the plant inclosure.

The total cost of road and equipment reported by the Lake Terminal Railroad Company to the Interstate Commerce Commission for the fiscal year ending June 30, 1911, was \$3,242,988.02, the inventory showing actual cost up to June 30, 1911, indicated that only \$1,792,929.84 was expended. It is evident that the property accounts





are now overstated about \$1,500,000 and that none of the property for which the \$2,000,000 stock was issued is now in existence. The industrial railroad justifies the figures reported to the Commission upon the ground that the present worth of the railroad property is far more than \$3,242,988.02.

The National Tube Company owns and operates dock facilities as a part of its property at Lorain for handling ore known as the National dock. Over this dock is handled ore for through shipment from the lake boats to various furnaces in Ohio and Pennsylvania. The railroad company has an easement over the dock property and for the privilege a payment of \$200,000 was made to the tube company, but the easement does not give the control of the dock to the industrial railroad. This consideration was fixed by the interested parties, but no tangible evidence as to how the amount was arrived at could be found. Over 40,000 cars of ore were delivered to connections at Lorain and South Lorain in 1911, and it is contended that this portion of the business is in no way connected with the tube works. But the fact remains that of the 40,000 cars forwarded only 66 were consigned to furnaces not owned or controlled by the steel corporation.

As an illustration of the fact that the industrial railroad does not discriminate between the facilities furnished for its so-called transportation operation and the operations admitted to be a plant service, a witness, in describing the service of handling the ore from the dock for shipment, stated that there is a very heavy grade from the dock to the distributing yard, making it impossible for a locomotive to handle more than 7 or 8 cars, and for this reason it is necessary to make three trips to assemble at the top of the hill an ordinary train of 21 cars. To facilitate this service, there are four main tracks at this point. The first, or north, main line is known as the pipe-mill lead, with which all of the tracks leading into the loading or unloading tracks are connected. The next is the scale track, used for weighing cars to avoid delay to the locomotive while switching at the pipe mill. The third track is for the purpose of assembling cars of ore switched from the dock in detail without interfering with the pipe-mill or scale-track work and the several operations of moving the coal, coke, and limestone to the mill and miscellaneous work to and from the connecting trunk lines through the yard can be carried on at the same time without interfering with other work being performed. In other words, four locomotives, variously used for plant switching, interchange switching, and miscellaneous yard switching, can be worked in the same vicinity without conflict. There are double tracks at other points, so that the service of switching inbound and

The allowances received from the connecting trunk lines are 10 cents per gross ton on inbound material and 15 cents per net ton on outbound manufactured products. In an exhibit filed of record it is shown that an allowance of \$1 and \$2.50 per car is made on certain commodities and on certain other commodities an allowance of 25 per cent of the through rate is made; the reason for these exceptions is not shown of record. For the interworks switching a charge of \$1.50 per carload is paid by the industry.

The industrial railroad is a member of the per diem agreement and is allowed four days reclaim, being one day for the haul in, one day for the haul out, and two days for the free time allowed to shippers and consignees. The free time commences when the cars are placed at the point of loading or unloading. The per diem paid by the industrial railroad in 1911 amounted to \$87,268.30. The amount of reclaim received from the trunk lines during the same period was \$126,073.50, a net profit of \$39,000. The industrial railroad during that year also received \$7,103.75 in per diem earnings on its own special 66-foot rail cars delivered to the trunk lines under load. This is another instance of the benefits derived by an industry through its plant railroad. The demurrage rules in the tariffs of the trunk lines allow two days free time to an industry for loading or unloading cars; the larger plant that has a railroad of its own which receives cars from the connecting trunk lines under the per diem and reclaim rule can control the cars for the period of the reclaim time allowance. In this instance the industry has the use of the car for four days, less the time actually required for switching between the plant and the connections with the delivering trunk lines. The reclaim allowed to industrial lines invariably results in benefiting the industry not only by the increased time allowance for the loading or unloading of cars, but it benefits the industry also, in the profit derived from reclaims by its industrial railroad, which it later receives in the form of dividends or as additional investment when dividends are not declared.

It is interesting to note that subsequent to the hearing the trunk lines voted to discontinue allowances of reclaims and to advance on January 1, 1913, the per diem rate from 30 and 35 cents per day to a uniform rate of 45 cents per day; in this connection the Lake Terminal Railroad filed a statement in the record, showing that on the basis of the income and expenses reported by that company for the year ending June 30, 1911, the discontinuance of the reclaim and the advance in the per diem rate would result in a net corporate loss of \$48,534.46, as against a net corporate income actually earned by it under the former conditions of \$107,426.04.

naces. No charge is made for the movement of the slag that is used by the industrial railroad or the trunk lines for ballast or for filling low lands. Some of the slag is crushed and sold for commercial purposes; for the movement of this slag the industrial railroad makes a charge of \$1.50 per car from the crusher to the trunk line connections. Any slag not disposed of for road-making purposes is dumped on the right of way beyond the Black River bridge.

During the year 1911 there were 165,740 loaded cars handled by the industrial railroad on which the revenue amounted to \$513,508.42. Of this total traffic and revenue 104,802 cars, earning a revenue of \$421,834.16, were switched for the National Tube Company and other subsidiary companies of the United States Steel Corporation; 361 cars, earning a revenue of \$1,290.26, for outside shippers; 84 cars, earning a revenue of \$94.50, were switched between the trunk lines; and 60,439 cars, earning a revenue of \$90,739.50, were handled in intermill switching for the industry. In addition to the intermill switching performed by the industrial railroad, the tube company handled 365,853 cars with its own power between the various departments of the plant.

Including the ore cars, only one-quarter of 1 per cent of the Lake Terminal's service was performed for interests or concerns outside of the National Tube Company. In the whole year of 1911, freight charges were collected from consignees on only 7 cars, the revenue being \$20.76. This outside traffic was principally supplied by the People's Coal & Supply Company, located at South Lorain, and involved an average haul of about $3\frac{1}{4}$ miles. When this traffic is received from the trunk line connections at the east end of the plant, the distance to the point of delivery is only a few hundred feet, but the cars are hauled into the plant, a distance of a mile or more for weighing and then hauled back to the point of delivery. Traffic from the trunk-line connection at the west end of the plant is hauled entirely through the plant property to the point of delivery at the east end. The trunk lines absorbed the charges on the remainder of the 361 cars switched for outside shippers.

It is stated that what is termed the "plant" service must necessarily be performed with the same power that interchanges the cars with the trunk lines. The service of switching the inbound raw material does not end until the cars are placed at the consuming point; the ore from the dock and the coke and limestone from the trunk lines must be placed at the furnaces at stated intervals and in the proper proportions. The coal received from the trunk lines is not switched direct to the point of unloading, the cars being held in the storage yards for the convenience of the industry and switched to the unloading point when required.

the existing tracks and equipment under a lease from the wire company. In 1902 it commenced the construction of tracks to connect up the several plant tracks. This work was completed and the operation over the tracks commenced in September, 1904.

The original capital stock of the industrial railroad was \$25,000. It was later increased, first to \$600,000, then to \$850,000, and is now \$1,500,000. The last increase was about 1904. It is stated that the proceeds of the increase in capital stock were used to pay for the right of way and for the construction of the tracks connecting the various departments of the plant with each other and with the contiguous trunk lines. There are no bonds, but there is a floating debt due to the wire company of about \$600,000. The entire capital stock, except that held for qualifying directors, is held in trust for the benefit of the United States Steel Corporation and its subsidiary, the American Steel & Wire Company.

The entire trackage operated is 55.27 miles, of which 30.68 miles are owned and 24.59 miles are leased from the wire company. Of the total miles operated 5.97 miles are designated as main track and 48.30 miles as yard tracks and sidings. Nearly all the track designated as main track is necessary to connect up the several plant tracks for one operation as an industrial unit.

The lease for the tracks originally provided that the industrial railroad should pay the wire company \$50,000 a year for the use of the tracks, but that lease was abrogated, and for several years it has been paying nothing whatever for the use of the tracks, except the cost of maintenance. After the discontinuance of the payment of \$50,000 a year the industrial line agreed to perform the interworks switching free of charge, but that arrangement later was abrogated, and under the present arrangement a charge is made for the internal switching the only consideration for the lease of the tracks being the cost of maintenance. This includes the maintenance of the tracks inside the plant, which are used exclusively for the plant's benefit, it being understood that certain of the tracks leased to the industry shall be exclusively used as a plant facility, and only used for railroad purposes when not required by the industry. The equipment consists of 19 locomotives, 855 freight cars, and 5 passenger cars; of the freight cars, 299 are 100,000-pound capacity steel hopper for handling ore, coke, coal, and limestone. All the equipment is owned by the industrial railroad.

In 1906 the wire company sold to the industrial railroad a number of locomotives and freight cars for \$407,000. The record does not show whether this amount has been paid or whether it is still carried as a charge against the railroad. The industrial railroad owns about 5½ lineal miles of right of way, for which the total cost was a little over

\$500,000, or about \$100,000 a mile; this amounts to approximately \$16,000 per acre for a right of way 50 feet wide. It is stated that the right of way was acquired from probably 200 different people, and in every case was purchased outright. Some of the right of way was acquired by condemnation proceedings. It is stated of record that, when the wire company decided to build a separate railroad, additional property was purchased and the tracks of the Erie Railroad were moved a distance of about 300 feet. The wire company paid the expense of relocating the Erie tracks to the amount of about \$500,000. This occurred in the fall of 1900 or in the spring of 1901 and was really the beginning of the construction of the Newburgh & South Shore Railroad.

The road is substantially constructed, 90-pound rails being used for the main track and 80-pound rails for the sidetracks. For the last three years steel ties have been used exclusively. The Newburgh & South Shore has several yards for classification and storage of cars, with an aggregate capacity for about 1,700 cars. These yards have sufficient ground for double this capacity when the tracks are needed.

The total valuation of the property, as reported by the engineers employed by the trunk lines and the steel company, was stated to be \$2,939,692 on June 30, 1911. This is based on the valuation of the property made June 30, 1908, of \$2,709,508, to which was added \$582,257 for betterments from June 30, 1908, to June 30, 1911; a deduction of \$352,073 for depreciation during the same period is shown on the estimate. This valuation was stated to be based practically on the cost of reproduction, taking into consideration the depreciation. In the annual report for the year ending June 30, 1911, the total investment in the property is stated at \$2,456,521.70.

The industrial railroad has track connection with the Baltimore & Ohio, Wheeling & Lake Erie, Pennsylvania Company, and Erie Railroads, and through the Cleveland Short line with the New York Central lines. It also connects with the River Terminal Railway, owned by Corrigan-McKinney Company and the Cuyahoga Valley Railway, owned by the Cleveland Furnace Company.

The general character of the service performed by the industrial railroad is the switching of empty and loaded cars between the trunk line connections and the various departments of the plant. It also performs all interworks switching at each of the plants. At the central furnace all the ore is received by boat and is unloaded on the wire company's docks with its own machinery; but before the ore can reach the furnaces it must be loaded into cars and switched to the furnace bins. The furnaces require about 45 cars of ore per day to keep them going. The disposition of the slag from the furnaces is provided for in various ways; it is handled in special ladle cars owned

by the industry. Some of it is disposed of to other railroads, some is crushed and used for commercial purposes, and the excess is used for filling gullies to provide more space or land for railroad yards. Two of the classification yards now in use were made in this way.

It is stated of record that the industrial railroad makes a charge for the movement of the slag from the furnace, irrespective of what it is used for, and the charge applies on movements to the dumping ground of the industry, to the lands of the industrial railroad, to the slag crusher, or to the trunk line connections. The finished product from the slag crusher moves under a switching charge the same as any other commodity. The present output of crushed slag, about 8 cars per day, is sold for street-paving purposes. The material for the furnaces is loaded in what are called charging buggies, which are switched by the industrial railroad up an incline to the furnace stacks. The entire production of the blast furnaces is switched in a molten condition to the various points where it is used. When all the furnaces are running a train is run each way every two hours handling about 130 ladles of hot metal a day. The coal, coke, and limestone is also switched from the trunk line connections or the storage yards to the furnaces at regular intervals.

Prior to the time the industrial railroad took over the tracks of the disconnected plants the trunk lines placed cars at the points where they were to be unloaded or loaded and distributed or spotted the cars where they were desired by the wire company, the trunk lines making all necessary classifications. At that time the wire company could not perform all this service with its own locomotives, because the tracks were not constructed in such a manner that they could get all around the plant. At this time all service in moving the hot slag to the dumping grounds was performed by the Baltimore & Ohio; the Erie Railroad hauled the hot metal from the central furnace, and the Pennsylvania Company from the Emma Furnace to the Newburgh plant; later the Erie either declined to continue this service or it was unsatisfactory to the wire company. The ore was delivered at the central furnace by the Baltimore & Ohio or the Erie and at the Newburgh furnace by the Erie or the Pennsylvania, the cars being spotted on the trestle by the trunk lines' engines, and on shipments of outbound pig iron the trunk lines placed the empty cars and took the loaded cars from the plant with their own power. Before the incorporation of the industrial railroad the trunk lines had direct connection with the plant tracks at each of the departments; but direct deliveries are impracticable now, owing to the enlargement of the plant and other changes whereby the trunk lines are excluded from the plant tracks and can no longer make a distribution of cars within the plant inclosure.

After the industrial railroad commenced operation it did not immediately begin to spot cars, the trunk lines continuing to perform that service until such time as the industrial railroad had facilities for doing it. The service was performed with the power of the industry at such times as the trunk lines failed, from one cause or another, to do the work. The service was taken over by the industrial railroad at different points gradually after the system was built up. The service now performed by the industrial railroad differs from the service formerly performed with the power of the trunk lines or that of the industry only in respect to the distance between the trunk lines and the plant; this distance was increased by establishing interchange tracks and classification yards at points more convenient for receiving and distributing around the plant the inbound raw material and the assembling and delivery to the trunk lines of the outbound manufactured products. By this arrangement better service is had in that it provides for the movement and placing of cars at the points of loading or unloading at regular intervals to meet the requirements of the industry.

In connection with the central furnace plant, the Semet-Solvay Company operates a coking plant, which is treated as a department of the industry, all freight handled for the Semet-Solvay Company being consigned to the furnace company. The industrial railroad does not serve any industries other than the wire company, but it is stated that it serves a number of other shippers, among which are mentioned the Standard Oil Company, the Farr Brick Company, the Rybak Sand Company, and the Great Lakes Towing Company. It is said there are also two coal companies that have yards accessible to the industrial railroad, and also a dealer in fire clay products.

During the year ending June 30, 1911, the industrial railroad handled 148,501 cars, earning a revenue of \$471,893.48, for the American Steel & Wire Company, of which 53,622 cars, earning a revenue of \$228,274.60, were interchanged with the connecting trunk lines. During the same period it handled 4,861 cars, earning a revenue of \$16,168.47, for outside shippers. These figures indicate that 96.69 per cent of the total freight revenue was derived from service for the American Steel & Wire Company and 3.31 per cent from service for the outside shippers; excluding the plant service for the wire company the figures for outside service would be 4.12 per cent.

The industrial railroad conducts a passenger business between Broadway in Newburgh and Jefferson avenue in Cleveland, running two trains of five coaches each way daily, one in the morning and one in the evening. About 90 per cent of the passengers carried are employees of the American Steel & Wire Company. The other passengers are principally employees of the Cleveland Furnace Company

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and the Corrigan-McKinney Company. There are very few passengers other than the employees of these industries. Each passenger pays a regular fare, buying monthly tickets good for 52 rides between Cleveland and Newburgh for \$2; between Cuyahoga and Newburgh for \$1.50. The single fare is 10 cents, and 10-ride ticket 50 cents. It will be seen by reference to the plat that this alleged passenger service extends only between the two separate plants of the wire company—the Newburgh plant and the central furnace—and amounts to practically nothing more than a service for the convenience of the industry in the daily assembling of the working force.

It is stated that under the promise of a large amount of traffic the industrial railroad established at considerable expense track connections and switches at the plants of the Cleveland Furnace Company and the Corrigan-McKinney Company, both of which are contiguous to its tracks. The connection at the Corrigan-McKinney plant involved an expenditure in excess of \$69,000. Up to about two years ago the industrial railroad handled about 75 per cent of the traffic of the Cleveland Furnace Company, but the traffic of the Corrigan-McKinney Company has not exceeded 10 or 15 cars a month, and at the time of the hearing the traffic from both had practically ceased. The explanation doubtless lies in the fact that each of these industries has incorporated a railroad of its own, that of the Cleveland Furnace Company being known as the Cuyahoga Valley Railroad and that of the Corrigan-McKinney Company as the River Terminal Railway. Both are described elsewhere in this report, and it will be seen that each receives the allowances from trunk lines on inbound material and outbound products. These two roads are included in the plat of the Newburgh & South Shore shown herein.

The industrial railroad files local and proportional tariffs with the Commission. Where the rate of the trunk lines is 40 cents per ton or more they absorb out of the through rate 10 cents per ton on commodities such as coal, coke, limestone, sand, brick, and pig iron, and 15 cents per ton on billets, scrap iron, and finished products. Where the rate is less than 40 cents per ton the industrial railroad at one time received 25 per cent of the charges, with a minimum of \$2.50 per car, but this rate was canceled prior to the hearing. Less than carload shipments are handled in transfer cars, the shippers loading solid cars of less-than-carload business for various trunk line transfer depots. The charge for moving such cars is \$2.50 per car, which is absorbed by the trunk lines. The rate for handling hot metal is 25 cents a ton, with a minimum of \$2.50 per ladle. The rate for moving billets, slag, etc., is \$2.50 per car.

At the time the Erie Railroad was handling the hot metal the wire company paid that line \$2.50 per ladle and \$50 a day for locomotives.

At the time the trunk lines were doing the spotting no allowances were made until April 1, 1904, at which time an allowance was made of 2 cents per ton on all traffic in and out. It was stated that this allowance amounted on an average to about 40 cents a car.

In 1906 the allowance was increased to \$2.50 per car, and in 1909 the allowances were fixed on the same basis as those of the Monongahela Connecting in Pittsburgh, 10 and 15 cents per ton.

There are no depot facilities for handling less-than-carload freight, nor are there any public team tracks. The industrial railroad issues local bills of lading which are exchanged for bills of lading issued by the trunk lines.

The industrial railroad is a member of the per diem agreement and is allowed a reclaim of five days, but supplies cars to the industry under the average demurrage rule. It is admitted of record that the industrial railroad receives the five days' reclaim whether the car is detained one day or five days, so that if a car is held only one day the difference of four days' reclaim represents a profit to the industrial railroad. This reclaim, in effect, allows the industry the use of each car for five days, through its control of the railroad that receives the reclaim allowance, and the profit derived by the industrial railroad from reclaims is a direct benefit to the industrial company in that it reduces the cost of operating its railroad facility. The hire of equipment account in the annual report for the year ending June 30, 1911, which includes the reclaims, shows that the amount received in excess of the amount paid was \$17,794.49.

For the year ending June 30, 1911, the total operating revenue was \$505,466.99, of which \$7,183.50 was derived from passenger service, \$488,084.03 from switching service, \$9,413 from car demurrage, and \$786.46 from rents and other miscellaneous items. The total operating expenses were \$409,539.02, leaving a net operating revenue of \$95,927.97. There was other income to the amount of \$28,383.09, making the gross corporate income for the year \$100,614.34, which, after the deduction of amounts paid for miscellaneous rents and interest on loans, \$19,387.13, left a net corporate income of \$81,227.21. There was a surplus from previous years of \$276,349.44, making a total accumulated surplus on June 30, 1911, of \$357,576.65.

CUYAHOGA VALLEY RAILWAY.

In this case, as in others elsewhere referred to, the plant facility tracks were taken over by a railroad company incorporated by the industry for the purpose of providing a common carrier operation in form, but since the plant track was taken over by the incorporated company the service has been substantially the same as that previously conducted by the industrial company.

The plant and a part of the tracks were originally constructed by the Cleveland Furnace Company in 1902, and until 1906 the tracks were operated by the industrial company as a plant facility. In May, 1905, the Cuyahoga Valley Railway Company was incorporated, and in January, 1906, it leased from the industrial company all the tracks in and around the plant. The terms of the lease are not given on the record. On December 10, 1908, all the tracks and equipment were sold to the Cuyahoga Valley Railway Company for \$140,000, but the ownership of the land upon which the tracks are laid was retained by the furnace company and leased to the Cuyahoga Valley for an annual rental of \$10,620 during the first five years, the rental thereafter to be such sum as might be agreed upon between the parties in interest; the industrial company owns all the capital stock of the industrial railroad, and, therefore, the payment of this rental, if it is paid, is in effect simply the transfer of funds from one pocket to another. The agreement further provided that the lease may be terminated at any time upon six months' notice in writing.

The tracks extend from a connection with the Baltimore & Ohio on the west side of the plant in an easterly direction crossing the Newburgh & South Shore and the Cleveland Belt & Terminal at grade near the plant inclosure, thence northerly through the plant to a connection with the Wheeling & Lake Erie at the northern boundary. The aggregate length of the tracks as they existed at the time of the hearing is not disclosed on the record; but in the annual report for the year ending June 30, 1911, the total trackage is stated to be 14 miles, of which 1 mile is designated as main track and 13 miles as yard tracks and sidings. The equipment consists of 4 locomotives, 12 steel flat cars, and 30 ore dumps.

The plant of the Cleveland Furnace Company consists of two blast furnaces for the manufacture of pig iron and by-products. The only other industries served by the Cuyahoga Valley are the plants of the Semet-Solvay Company and M. A. Callahan; both are located on the property of the industry. The Semet-Solvay Company manufactures soda ash, coke, and other products of coal, and leases its whole plant from the furnace company under a contract by which the furnace company furnishes the coal and receives all the coke that is made from the coal, on which it pays the conversion charge, the amount of which is not stated of record. The other products of the coal belong exclusively to the Semet-Solvay Company. It is stated that under some form of agreement the operation of this plant will eventually be taken over by the furnace company and the by-products other than coke will be handled by the Semet-Solvay Company as sales agent. Under the present arrangement the Semet-Solvay Company

pays no rent for the use of the plant, that being a part of the consideration for coking the coal. M. A. Callahan operates a sand business and pays the furnace company a rental of \$1 per car of sand shipped. As elsewhere stated, sand is used in considerable quantities at all steel plants, and it is probable that a large part of the sand from the Callahan plant is consumed by the furnace company.

The industrial railroad performs all switching service between the plants of the Cleveland Furnace Company, the Semet-Solvay Company, and M. A. Callahan, and the interchange points with the connecting carriers. Inbound shipments for the furnace company consist mostly of coke, coal, limestone, and miscellaneous material, such as clay, timber, and building material. Most of the ore comes in by boat and is carried to the furnaces by a conveyor device, but there are occasions when ore is loaded on cars and switched by the industrial railroad from the dock to the bins. The finished product is loaded at what is known as the grading yard and switched by the industrial railroad to the various trunk line connections.

It is shown on the record that of the total number of cars handled during the year 1911, 27,649 cars, or 93.9 per cent, were handled for the furnace company, 386 cars, or 1.3 per cent, for the Semet-Solvay Company, and 1,424 cars, or 4.8 per cent, for M. A. Callahan.

In addition to the interchange switching the industrial railroad performs internal switching for the furnace company, which consists chiefly of moving ladles of hot metal from the furnace to the pigging machines. Whether this service is performed on tracks owned by the industrial railroad or by the furnace company is not stated of record. It was stated by the principal witness that it is not practicable or feasible to handle the inbound raw material in any manner other than that in which it is now handled by the industrial railroad. The bins at the furnace are of very small capacity and there must be a continuous service of placing cars for unloading in order to keep material going into the furnace as fast as needed. From the standpoint of the furnace company it is not so much the regularity of the switching service or regular hours for the placing of ores, coke, and limestone; it is more the constant attendance with the material for unloading, so that the bins will at all times contain sufficient material for the regular operation of the furnace. The loads must be placed as fast as the bins are empty. If the trunk lines undertook to make direct delivery of the raw material, there would be much confusion and delay, and the objection to the arrangement for one of the trunk lines to furnish the locomotive and perform the switching service for all of the lines is that it would be difficult to get prompt action out of an official who is far away and not particularly interested in giving prompt service. The witness admitted that the industrial railroad is now doing for the

furnace company substantially what the furnace company formerly did for itself.

The industrial railroad charges \$2.50 per car for all switching movements, including interworks switching for the furnace, with the exception that for the movement of hot metal it charges \$1 per ladle, which includes the return of the empty ladle. No material, such as slag and other refuse, hauled to the dumping ground is handled free. The connecting trunk lines absorb the switching charge on interchange movements when their rates are 50 cents per ton or more. For any ore that is loaded on cars to be transferred from the ore dock to certain specified bins the furnace company pays the industrial railroad \$2.50 per car. Before the river was dredged the ore was unloaded on the docks of the Wheeling & Lake Erie, about 1½ miles north of the present location of the furnace, and brought down to the furnace in dump cars by the Wheeling & Lake Erie to the trestles, where the ore is stored. The witness could not remember what charge was made by the Wheeling & Lake Erie for this service, but stated that a certain rate per ton was paid by the furnace company and that a refund of the same rate per ton was made on the outgoing pig iron. It was, in fact, a milling-in-transit arrangement. This practice was discontinued some years ago.

The industrial railroad issues bills of lading for shipments destined for delivery in the city of Cleveland, but on interchange business with the trunk lines involving a line haul the industrial railroad's bill of lading is taken up and the bill of lading of the trunk line substituted. There appears to be an unusual arrangement between the industrial railroad and the connecting trunk lines for the interchange of cars, which, in effect, gives to the furnace company the benefit of double the free time accorded to industries under the demurrage rule in the tariffs, although the form of applying the rule is accomplished by charging demurrage against the industrial company for the time the car is held in excess of 48 hours. If the demurrage charge is paid by the industry, it goes into the treasury of its industrial railroad and ultimately back to the industry either in the form of dividends or by reducing the expense of its railroad operation. The industrial railroad is not a member of the per diem association, but pays the Baltimore & Ohio and the Wheeling & Lake Erie the regular per diem rate for any time over four days in handling loaded cars. No reclaim is allowed for the time not taken. This arrangement is covered by a form of contract between the Cuyahoga Valley and the Baltimore & Ohio and the Wheeling & Lake Erie. These contracts were made May 1, 1911, and provided, among other things, that the trunk lines would be responsible to car owners for all per diem accruing and allow the Cuyahoga Valley the actual time re-

quired to perform the service and for the loading and unloading the total allowance on any one car not to exceed four days, except when loaded cars are reloaded after being made empty, in which case the Cuyahoga Valley will be allowed additional time for the reloading, the total allowance on any one car not to exceed eight days. It was also provided that the Cuyahoga Valley will not render any per diem report whatever to the owners of the equipment and that it will assess and collect demurrage under the national car-demurrage rules on interstate traffic and under the rules promulgated by the Railroad Commission of Ohio applying on state traffic.

Prior to May 1, 1911, demurrage charges accrued against the Cleveland Furnace Company from the time a car was delivered to the Cuyahoga Valley Railway until such car was returned by the Cuyahoga Valley, while since May 1, 1911, demurrage charges on any car have accrued against the Cleveland Furnace Company only during the time the car was in possession of the furnace company. From May 1, 1910, to March 1, 1911, the amount of demurrage paid was \$4,896; from May 1, 1911, to March 1, 1912, the amount paid was \$2,966, and being paid to the industrial railroad it was only a transfer of the amount from one pocket to the other.

The annual report for the year ending June 30, 1911, shows the total operating revenue for switching \$61,332.53; car service, \$321.20; total, \$61,653.73; operating expenses for the same period, \$54,435.14; net operating revenue, \$7,218.59; after the payment of taxes, \$5,847.96, the net corporate income for the year was \$1,370.63. For the previous year the expenditure exceeded the income by \$766.24, which left a net surplus on June 30, 1911, of \$604.39. The Cuyahoga Valley filed its first annual report for the year ending June 30, 1910, and keeps its accounts in accordance with the methods prescribed by the Interstate Commerce Commission. The railroad company keeps separate books of accounts and a separate bank account, but there is a joint arrangement between the railroad and the furnace company for the clerical work.

RIVER TERMINAL RAILWAY.

In this case we have a furnace company, a dock company, and an industrial railway company, each separately incorporated, but all owned in the same interest and being one investment.

The River Furnace Company, located at Cleveland, Ohio, has a modern furnace for the manufacture of pig iron; it was organized a number of years ago under the name of the River Furnace & Dock Company, and operated under that name until the expiration, in 1907, of its lease of the property then occupied by it on the Cuyahoga River. In December, 1909, the River Terminal Railway Company and the

River Dock Company were separately incorporated and the River Furnace Company purchased 41 acres of land at another location and built a new plant, which at the time of the hearing had a capacity of 800 tons of pig iron per day. Some of this land of the furnace company is leased to the dock company, and some to the River Terminal Railway. The River Terminal Railway, at the time of its incorporation, took over under lease for a term of 50 years from January 1, 1910, all the railroad tracks owned by, and located on the property of, the furnace company, and which had theretofore been operated by the furnace company with its own power as a plant facility. The tracks so leased consisted of 6.30 miles, of which 1.50 miles are designated as main line and 4.80 miles as yard tracks and sidings. The lease provides for the payment of a rental of \$5,000 a year, in addition to which the industrial railroad performs all internal switching of cars for the furnace company without charge. The equipment is owned by the industrial railroad, and consists of three locomotives and six steel gondolas.

It is stated of record that the furnace company has made plans for the erection of a new steel plant on the opposite side of the Cuyahoga River, where it has recently purchased about 61 acres of land, and that a bridge will be built across the river and the tracks of the industrial railroad extended to the new plant.

The trunk line connections are the Baltimore & Ohio and the Wheeling & Lake Erie; it also connects with the Newburgh & South Shore Railroad, owned by the American Steel & Wire Company. The right of way of the Wheeling & Lake Erie Railroad originally extended through the middle of the property of the furnace company, but this right of way was conveyed to the furnace company in exchange for the present right of way of that line, the furnace company bearing the expense of moving the tracks, which amounted approximately to \$160,000. The removal of the Wheeling & Lake Erie tracks also involved an arrangement with the Newburgh & South Shore for the elevation of the Wheeling & Lake Erie tracks, so that the tracks of the Newburgh & South Shore could pass under them, and the Newburgh & South Shore paid \$37,555.24 of the \$160,000 expended for relocating the Wheeling & Lake Erie tracks. In addition there was an exchange of right of way between the Newburgh & South Shore and the furnace company, the two companies exchanging acre for acre, and the furnace company paying the Newburgh & South Shore for the excess acreage received, on a basis of \$10,000 per acre. The explanation made of record of these transactions is that the furnace company went to the expense for the purpose of making available for manufacturing purposes a property which was cut in two by a railroad and paid the amounts indicated simply because it

was the only means by which that tract of land could be made available. It may fairly be inferred, however, that one purpose for excluding the trunk line from the property to be occupied by the industry was to provide for a service by the industrial railroad between the plant and the trunk line.

The property occupied by the River Dock Company, which operates a merchant dock equipped with three unloaders of a capacity of 1,000 tons an hour, is leased from the furnace company for a consideration of \$2,500 per year and the further consideration that the dock company will move the ore from the dock to the ore bins at the furnace free of charge. It is stated, however, in a letter received from the witness subsequent to the hearing that for the movement of ore from the dock to the furnace the furnace company pays the dock company 3 cents per ton. The equipment used in this work is electrically operated and the furnace company furnishes the power for which it makes a charge against the dock company. In 1910 there were 525,000 tons of ore handled over the dock and in 1911, 691,000 tons. It is stated that only about 3,000 tons were handled for others than the controlling interests in each of these two years. The 3,000 tons in each instance were handled for the Central Chemical Company.

It is not apparent on the record that there are any industries served by the industrial railroad except that of the controlling interests.

The industrial railroad performs all interchange switching between the plant of the furnace company and the interchange points with the connecting trunk lines and also switches cars between the dock and the connecting trunk lines for the shipments of ore. The traffic interchanged with the Erie, the New York Central lines, and the Pennsylvania Company must necessarily pass over the rails of the Baltimore & Ohio, the Wheeling & Lake Erie, or the Newburgh & South Shore. The industrial railroad also performs all internal switching for the furnace company, such service being performed free as a part of the consideration for the lease of the tracks.

The tracks on the dock property are included in the lease to the industrial railroad and are used in connection with the ore shipped out. The track scales are owned by the furnace company, but are operated by a joint employee of the industrial railroad, the furnace company, and the dock company.

After the River Terminal Railway was completed at the new location of the furnace company in 1910, the Baltimore & Ohio agreed to allow the industrial railroad 10 cents per ton out of the through rate on certain classes of material and 15 cents per ton on other classes, but it is stated that all the traffic handled by the industrial railroad takes the 10-cent allowance. The understanding

Baltimore & Ohio was that the allowance to the River Terminal Railway Company shall continue so long as it is paid to the Lake Terminal Railway at Lorain, Ohio, and that any changes in the arrangement with the Lake Terminal shall also apply to the River Terminal.

A similar arrangement was made with the Wheeling & Lake Erie, and a tariff was issued providing for the allowances of 10 cents and 15 cents per ton, but this tariff was later canceled, and the Wheeling & Lake Erie issued a tariff allowing the River Terminal \$2.50 per loaded car, both inbound and outbound. This change in the allowances was not accepted by the River Terminal because the allowances of 10 cents and 15 cents per ton were still being paid to the Newburgh & South Shore and the Lake Terminal. Since the allowances were reduced to \$2.50 per car the industrial railroad has accepted no payment from the Wheeling & Lake Erie because it believed it was being discriminated against in favor of the Lake Terminal and the Newburgh & South Shore. No divisions or allowances were ever received from the Newburgh & South Shore. The Pennsylvania Company, the New York Central lines, the Lake Shore, and the Big Four refused to make any allowances or divisions, but the Erie allows \$2.50 per car under a published tariff. All the allowances apply on shipments where the freight rate is 50 cents or more per ton, except that in the case of the Baltimore & Ohio an allowance is made on certain commodities where the freight rate is 40 cents or more per ton, and for other shipments 25 per cent of the rate. In addition to the allowances made to the industrial railroad, the dock company also receives 2 cents a ton when the ore moves without being unloaded on the dock, and 10 cents per ton when the ore is first placed on the dock and subsequently loaded into cars and forwarded.

An interesting feature in connection with the service performed by the industrial railroad is the statement made of record that on ore shipments over the dock routed by way of the Pennsylvania Company or the New York Central lines the industrial railroad receives no allowance or switching charge of any kind, although it receives allowances from the Baltimore & Ohio and the Erie for the same service. In 1911, 2,292 cars of ore were routed over the Pennsylvania Company, on which no allowance was made to the industrial railroad for switching. The distance covered by the switching of cars of ore from the dock to the Baltimore & Ohio and the Wheeling & Lake Erie connections is approximately three-fourths of a mile. The movement from the furnace to these two connections is about one-fourth of a mile.

The industrial railroad issues no bills of lading. The bills of lading are made out by the dock company and the furnace company for their

respective shipments, and are signed by the trunk lines over which the shipments are routed.

The River Terminal Railway Company is not a member of the per diem agreement. The furnace company pays demurrage to the trunk lines under the average rule.

UPSON NUT COMPANY.

The plant of this company is located on the Cuyahoga River at Cleveland, Ohio, and covers an area of about 25 acres, bounded on the north and east by the tracks of the Big Four, on the south by the Erie Railroad, and on the west by the river. The plant is composed of three departments—the furnace department, the steel plant, and the nut and bolt works—and the combined plants employ an aggregate of about 1,600 men. The nut company has about $4\frac{1}{2}$ miles of railroad tracks located within the plant inclosure, which it operates with 4 locomotives; it has 6 gondolas and 6 hot-metal ladles, in addition to which it has 51 ingot buggies and 42 scrap buggies. All internal and interchange switching at the furnace and steel departments is performed by the power of the industry, but all switching at the nut and bolt department, both internal and interchange, is performed by the trunk lines. For the movement of the interchange traffic the industry uses two tracks of the Erie Railroad, aggregating in length 1,218 feet. The average distance covered by all interchange switching is 2,540 feet. It is stated on the record that the reason the trunk lines do not enter the furnace and steel departments and perform the service there, just as they do at the nut and bolt department, is that it is necessary for the industry to keep an engine at the furnace and steel departments for the frequent movement of hot metal and ingots, and these movements must be made at the times required by the industry, and could not be conducted successfully unless the locomotive were under the immediate control of the industry. It is asserted that the cost of the service is greater than the amount received in allowances from the carrier, and that the reason that it is continued at a loss is that in no other way could the work be done satisfactorily.

No allowances have been received from the Wheeling & Lake Erie since January 1, 1911. Before that time an allowance of \$1 per car was received. The Erie Railroad has an arrangement with the nut company through which the latter assumes one-third of the cost of switching, the remaining two-thirds being prorated between the two companies on the basis of the number of cars handled for each. This arrangement includes the interplant movement and also the cost of maintaining and operating locomotives, which is said to be between 75 cents and 90 cents per car handled. It is stated of

record that the actual cost of the switching for the calendar year 1911 was \$18,101.56, and that the nut company received from the Erie Railroad \$6,041.11 under the agreement for prorating the switching cost. The average cost per car handled was \$2.19, and the average prorated cost \$1.46 per car. For the movement of the material from the steel department to the nut and bolt department the industry pays the trunk line 15 cents per ton.

ETNA & MONTROSE RAILROAD.

This is one of several instances of the incorporation of tracks that had been constructed and operated by the industrial company as a necessary plant facility and where the character of the service was in no wise changed after the incorporation.

The Carnegie Steel Company, a subsidiary of the United States Steel Corporation, has a plant at Etna, Pa., known as the Isabella Furnace, which manufactures ferromanganese and pig iron and employs between 400 and 450 men.

As a facility for the furnace operations the steel company constructed, and operated with its own power, a system of yard tracks and sidings, which connected with the Baltimore & Ohio and the Pennsylvania railroads, the tracks of which adjoin the plant property. In 1896 the steel company incorporated the Etna & Montrose Railroad Company, which took over the 2.52 miles of track and right of way in exchange for its total capital stock of \$60,000. This stock is still owned by the steel company.

The track and right of way which was thus taken over by the railroad company consisted of the two outside tracks surrounding the plant and included the connections with the trunk lines. It will therefore be seen that by the incorporation of these tracks it became impossible for the trunk lines to reach the plant except over the tracks of the industrial railroad. It has the secondary effect of restricting the public which this railroad may serve to the plant around which it is built. At the time of the hearing the total operated trackage was 9.12 miles, of which 2.52 miles were owned by the industrial railroad and 6.60 miles were under lease to it from the steel company. The equipment is also leased from the steel company and consists of 5 locomotives and 14 cars, the consideration for the lease of the tracks and cars being \$10,000 per annum. All the tracks are located in and around the plant. It is stated that during the past 10 years the steel company has furnished to the industrial railroad 4 miles or more of additional track, but the annual rental has not been increased.

Its annual report for the year ending June 30, 1911, shows the total investment in the road and equipment, less depreciation, to be

\$65,457.85. The Commission's examiners found that the original cost of the road, approximately \$26,000, had been charged to profit and loss account, and the cost of three of the locomotives which had been reported as owned is charged variously to maintenance of equipment, profit and loss, and improvements. It was also found that there is set up as an offset to the capital stock of \$60,000 the leasehold interest that the Etna & Montrose has in the tracks that it leases from the steel company.

The engineers employed by the steel company to make a valuation of the property placed the total value of the tracks and equipment at \$45,000.

The tracks of both the Baltimore & Ohio and the Pennsylvania railroads parallel and adjoin the property line of the industry, one on the north side of the plant and one on the south side. The right of way of the Baltimore & Ohio runs directly through the plant property, and it is apparent that inbound and outbound traffic could be picked up and delivered by the trunk lines directly at the plant.

The industrial railroad performs all interchange and interworks service for the steel company and operates all the tracks in and around the furnace. A certain portion of the cost of operating one of the locomotives used in plant service, such as the movements of hot-metal ladles and the placement of miscellaneous cars, is paid to the industrial railroad by the steel company, in addition to a charge of \$1.50 per car, but this agreement for a division of the cost does not apply to any business interchanged with the trunk lines. The average daily inbound traffic amounts to 665 tons, outbound 254 tons; but when the plant is running at its full capacity the inbound freight averages 4,500 tons per day and the outbound about 1,300 tons per day. No traffic is handled or service performed for others than the controlling industry.

The industrial railroad received allowances from the connecting trunk lines of \$2.25 per car on ore, \$1.75 on coke, and \$1.60 on limestone. For all other switching a charge is made against the industry of \$1.50 per car. No allowances are made by the trunk lines on outbound traffic. Cars are interchanged with the trunk lines under the demurrage rules; it is said that all demurrage is billed against the steel company and paid directly to the trunk lines.

The assistant superintendent of the Etna & Montrose is said to be employed by both the Carnegie Steel Company and the industrial railroad, but his entire salary is paid by the steel company. The salaries of the other employees are paid by the industrial railroad.

For the year ending June 30, 1911, the total operating revenue was \$28,193.40; the operating expenses aggregated \$37,190.92; and an operating deficit of \$8,997.52 is shown. Including the payment of

taxes, rentals, and other charges against income the total deficit for the year amounted to \$13,259.64. There was, however, an accumulated surplus from previous years of \$20,176.89, which left a net surplus on June 30, 1911, of \$6,917.25.

The industrial railroad files annual reports and keeps its accounts in the prescribed form.

PITTSBURGH, ALLEGHENY & M'KEES ROCKS RAILROAD.

The Pressed Steel Car Company operates two plants for the manufacture of railway equipment, one located at Allegheny, covering about 16 acres, and the other on the opposite side of the Ohio River at McKees Rocks, covering about 46 acres. The two plants employed about 4,000 men at the time of the hearing, but when running at full capacity about 7,500 men are required. Together they have a capacity for building about 150 freight cars per day and about 22 passenger cars per month. In addition to its own plant the car company controls the Pennsylvania Malleable Company and the Central Car Wheel Company, located in the vicinity of the McKees Rocks plant. The malleable company's plant has a capacity for 2,500 tons per month and the wheel company a capacity of 700 car wheels per day. As a facility in its industrial operations the car company originally had an aggregation of tracks around its two plants, which were known as the North Shore Terminal Railroad, incorporated in 1898 with a capital stock of \$100,000 and having 4.90 miles of track; the Pittsburgh & Allegheny Railroad, incorporated in 1899 with a capital stock of \$100,000, having 4.90 miles of track; and the McKees Rocks Railroad, incorporated in 1899 with a capital stock of \$50,000, having 4.50 miles of track. In September, 1899, the Pittsburgh, Allegheny & McKees Rocks Railroad Company was incorporated with a capital stock of \$250,000, and the three separate lines were consolidated under that name. The three railroad properties were then owned by the car company and were transferred to the new consolidated railroad company in exchange for its capital stock. The car company therefore has complete ownership of the industrial railroad.

The latter at the time of the hearing consisted of two divisions having no physical connection with each other, a part of the tracks being located at the McKees Rocks plant and a part at the Allegheny plant. The tracks at the McKees Rocks plant aggregated 12.96 miles and at the Allegheny plant 3.81 miles. Of this total of 16.77 miles, only 3.15 miles are designated as main line. The remaining 13.62 miles consist of yard tracks and sidings. In addition to these tracks the industrial railroad operates 5.85 miles of sidings that are owned by the car company and 1.16 miles of sidings owned by the Pennsylvania Malleable Company and the Central Car Wheel Company, making a

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total operated trackage of 23.78 miles. It is not apparent that any rental is paid for the use of the plant tracks. The equipment consists of 10 locomotives and 132 cars. The industrial railroad did not own the right of way on which its tracks are laid until a short time before the hearing. Under date of April 18, 1910, the car company deeded to the industrial railroad, for a consideration of \$238,605, the easement over a right of way aggregating about 124 acres at McKees Rocks, and on June 1, 1911, for a consideration of \$152,175, an aggregate of about 25 acres at Allegheny, reserving certain portions of the Allegheny property for the use of the car company.

The trunk line connections are the Pittsburgh & Lake Erie, Pittsburgh, Chartiers & Youghiogeny at McKees Rocks, and the Pennsylvania and Baltimore & Ohio at Allegheny. It is stated that neither the Pennsylvania nor the Baltimore & Ohio maintains side-tracks at the point of interchange.

The general character of service performed by the industrial railroad for the proprietary company consists of the switching of empty and loaded cars between its several industries and their trunk line connections, together with all internal switching. The total traffic handled during the year ending December 31, 1911, amounted to 12,687 loaded cars inbound, and 10,282 new cars outbound. The industrial railroad performs only a small portion of the switching service at the plant of the Pennsylvania Malleable Company and the Central Car Wheel Company, the major portion of the switching at these plants being performed by the trunk lines free of charge. Such switching as is necessarily performed by the industrial railroad at these two plants is charged for at the rate of \$2.50 per loaded car, which is collected either from the trunk lines or from the industries. The tracks of these two plants are maintained by the industrial railroad, for which the industries pay the actual cost plus 10 per cent.

It is stated of record that the internal movements of cars at the Allegheny plant from June, 1911, to January, 1912, were 1,206 and at the McKees Rocks plant for the same period 4,165 cars. The lowest cost was 62 cents per movement at the McKees Rocks plant and 63 cents per movement at the Allegheny plant. This cost applies to each movement of a car both in and out and intramill, and practically covers the cost of operation, not including any overhead expenses, office expenses, maintenance of track, or the general investment. The industrial railroad issues a switching tariff which also contains rules governing car demurrage and charges for weighing cars. This tariff provides for the free movement of granulated slag and clean ashes from all industries and sidings to the junction with the connecting trunk lines; the disposition made of the slag and other refuse is not stated of record but it may be assumed that this free movement

to the trunk lines is a method of disposing of at least a part of it. For all other movements of freight in carloads a charge is made of \$2 per car for internal movements and \$2.50 a movement to the junctions of the connecting trunk lines. On new freight cars delivered to the trunk lines the charge is 50 cents each; new baggage and combination cars and elevated, railway mail, and passenger cars \$1 each; special movements \$5 per hour for service of locomotive and crew in addition to the regular switching charge.

The industrial railroad receives no allowances from connecting carriers, but the switching charges are absorbed by the Wabash-Pittsburgh Terminal and the Bessemer & Lake Erie at McKees Rocks, and the Buffalo, Rochester & Pittsburgh at Allegheny. These roads do not have direct connection with the industrial railroad; the intermediate service is performed by the Pittsburgh & Lake Erie. On cars interchanged with the Wabash-Pittsburgh Terminal this intermediate service covers a distance of approximately 2½ miles for which the Pittsburgh & Lake Erie makes a charge of 22½ cents per ton on noncompetitive business and 45 cents per ton on competitive business which is absorbed by the Wabash-Pittsburgh Terminal. The Bessemer & Lake Erie absorbs 60 cents per ton on both competitive and noncompetitive business in addition to the switching charge of the industrial railroad; the intermediate service in this case is also performed by the Pittsburgh & Lake Erie. The Buffalo, Rochester & Pittsburgh has an agreement with the Baltimore & Ohio under which cars are switched to the tracks of the industrial railroad at \$1 per car, which is absorbed by the Buffalo, Rochester & Pittsburgh in addition to the charge made by the industrial railroad. The absorption by the Wabash-Pittsburgh Terminal varies from the charge that appears in the tariff of the industrial railroad. There are a few items, such as sand, brick, and fire clay, upon which the absorption is \$1.60 per car, instead of \$2.50 as named in the tariff. In such instances the industry is charged with the balance of the tariff rate. The switching charges of the industrial railroad absorbed by the trunk lines cover only about 5 or 6 per cent of the interchange traffic, and where the switching charge is not absorbed by the trunk lines it is collected from the industry. It is stated of record that for the year ending June 30, 1911, the absorption of switching charges by the Buffalo, Rochester & Pittsburgh amounted to \$103.50, by the Bessemer & Lake Erie \$2,685, by the Wabash-Pittsburgh Terminal \$1,407.80, miscellaneous absorption from misrouting \$5, a total of \$4,201.30; paid by the Pressed Steel Car Company \$78,514.08, paid by other industries for local movements \$208.67, a total of \$78,722.75. Bills of lading and waybills for outbound traffic are issued by the connecting trunk lines.

The industrial railroad operates a ferryboat service between the two plants. The traffic of this ferryboat consists of passengers and less-than-carload freight. The passengers carried are principally employees moving between the plants and their homes. The freight handled is an interplant movement between the various departments of the plant. During the year 1911 there were handled 1,860 tons of freight and 220,761 passengers, earning a revenue from these two sources of \$11,888.97. The annual report for the year 1911 shows a total revenue from the operation of the ferry line of \$5,506.28. The expenses of operating the ferryboat exceeded this amount by \$1,564.53.

The industrial railroad interchanges cars with the connecting trunk lines at McKees Rocks under the per diem rule and is allowed four and a half days' reclaim for each loaded movement. For the period from 1904 to 1911 the excess of reclaims over the per diem paid was \$24,768.05. In this as in other cases in this proceeding the industry is relieved from the operation of the demurrage rule and benefits by the increased time covered in the reclaim period for loading or unloading cars. The industrial railroad also derives a profit to the extent of the amount of reclaim allowed in excess of per diem paid. At the Allegheny plant cars are interchanged under the demurrage rule and only 48 hours are allowed for the return of the car. It is stated of record that in February, 1910, the industrial railroad requested the connecting trunk lines either to pay for the interchange switching service or perform the service themselves, but no action has been taken by the trunk lines.

The annual report for the year ending June 30, 1911, shows that the operating expenses and other charges exceeded the revenues and other income to the amount of \$19,387.49, but there was an accumulated surplus from previous years of \$69,415.50 which, after various adjustments, left a net surplus for the year of \$41,860.30. It is stated of record that a dividend of \$5,000 was declared in December, 1910, but this dividend does not appear in the annual report for the year ending June 30, 1911.

PITTSBURGH & OHIO VALLEY RAILROAD.

At the time of the hearing the operation of the plants served by this road had been temporarily discontinued. The plants consist of two blast furnaces, one known as the Edith furnace having a capacity of about 450 tons of pig iron a day, which is located on the bank of the Ohio River at Allegheny; the other known as the Neville Island furnace having a capacity of from 450 to 500 tons of pig iron daily, is located on Neville Island, several miles down the Ohio River. These two furnaces are the property of and were originally operated by the
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American Steel & Wire Company, but at the time of the hearing had been taken over by the Carnegie Steel Company, both being subsidiaries of the United States Steel Corporation. The Pittsburgh & Ohio Valley Railroad was incorporated in December, 1899, with an authorized capital stock of \$500,000, of which \$60,000 was issued and is now held by the American Steel & Wire Company. There are no bonds, but there is \$100,000 due to the controlling interests.

The industrial railroad consists of two disconnected sets of tracks. The one which is referred to as the Allegheny division is located between Preble avenue and the Ohio River in Pittsburgh north side, and the other, referred to as the Neville Island division, is located at the eastern end of Neville Island. The two so-called divisions are about five miles apart, and so far as operation is concerned are two separate railroads. There is a total operated trackage of 12.78 miles, of which the Allegheny division has 1.18 miles and the Neville Island division 11.60 miles. The Allegheny division is entirely owned by the American Steel & Wire Company, but is operated by the industrial railroad under agreement. The tracks of the Neville Island division are owned by the industrial railroad, but the right of way is leased from the American Steel & Wire Company. Under the terms of the lease for the right of way on the Neville Island division and the right of way and tracks on the Allegheny division the industrial railroad performed certain switching to and from the plants free; the cost of this plant switching for the year ending June 30, 1910, amounted to \$15,791, so that the industry received as compensation for the right of way and 1.18 miles of track the equivalent of \$15,791. The total value of the property leased by the industry to its industrial railroad is stated to be \$96,000. The equipment consists of 3 locomotives and 1 car on the Neville Island division and 3 locomotives on the Allegheny division. The annual report for the year ending June 30, 1911, shows a total investment for road and equipment, less accrued depreciation, of \$174,386.85, but the valuation of the property made by engineers employed for that purpose is stated to be \$280,541.56.

The trunk line connections with the Allegheny division are the Baltimore & Ohio on one side of the plant and the Pennsylvania Company on the other side, both immediately adjoining the plant. The Neville Island division connects with the Pittsburgh & Lake Erie and the Pennsylvania Company by means of the Pittsburgh, Chartiers & Youghiogheny Railroad, which is owned jointly by the two trunk lines. The Allegheny division serves the Edith furnace and the Neville Island division serves the Neville Island furnace; both of these furnaces have been shut down for almost two years. The Allegheny division does not serve any other industry than the furnace of the

steel company; the Neville Island division serves the Ohio Valley Water Works Company and one shipper of farm products, in addition to the furnace of the steel company. When the plants are in operation the general character of service performed is the switching of empty and loaded cars between the trunk line connections and the points of placement within the plants. It is stated that when both plants are in operation the industrial railroad handles about 800,000 tons annually, 15 per cent of which is internal switching for the industry, and the balance is interchange switching between the plants and the trunk lines.

During the operation of the plants the industrial railroad received allowances from the trunk lines of \$2.25 per car on ore, \$1.75 on coke, and \$1.60 on limestone. For the switching of all other commodities handled the steel company is charged a rate of \$1.50 per car. For outside switching a charge of \$3 per car is made.

The Neville Island division is a member of the per diem agreement and received four days' reclaim. The Allegheny division interchanges cars under the demurrage rule. In a statement filed of record it is shown that for the year ending June 30, 1910, the total per diem paid on foreign cars amounted to \$14,040.05 and that the reclaim received during the same period amounted to \$14,335.40. This indicates that there was not only a profit to the industrial railroad in the excess of reclaims over the per diem paid, but a considerable benefit to the industry through the increased time allowance for loading or unloading cars. The annual report for 1910 does not show that any demurrage was collected during that year.

ELWOOD, ANDERSON & LAPELLE RAILROAD.

This is an instance of the purchase by an industrial company of the switch tracks of a trunk line that formerly furnished all necessary facilities at the industry for delivering inbound material and forwarding outbound manufactured products.

The plant of the American Sheet & Tin Plate Company at Elwood, Ind., is spread over about 23 acres of ground, all inclosed within a fence; it consists of rolling mills and various other departments and buildings used in connection with the manufacturing operations. The company does not operate blast furnaces, but obtains its steel bars, pig tin, and other raw material from outside sources.

The plant was originally owned by the American Tin Plate Company, but was afterwards acquired, and is now owned, by the American Sheet & Tin Plate Company, a subsidiary of the United States Steel Corporation. All the tracks within the plant inclosure were formerly owned and operated by the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad (Pennsylvania Company), by which all the

plant switching service was performed. The ownership of the tracks did not include the right of way; the title to all the land within the plant inclosure remained with the industrial company. The record does not disclose the terms under which the trunk line constructed the tracks within the plant inclosure for the convenience of the industry. Whatever the arrangement was, it was apparently made with the former owners of the plant before its acquisition by the present owners through purchase. In 1897 the industrial company purchased all these tracks for the sum of \$50,000. It thereupon incorporated the Elwood, Anderson & Lapelle Railroad Company, with a capital stock of \$50,000. The tracks were then transferred by the industry to the incorporated railroad company in exchange for the \$50,000 of capital stock. All of this stock is owned by the industry.

It is stated that practically none of the old tracks so purchased from the Pennsylvania Company now exist, but that all have been rebuilt; it is also said that the old connecting track leading from the Pennsylvania right of way into the plant has been removed; the reason assigned for this is that the connection was inconveniently located for receiving and forwarding freight. At this time there are 4.51 miles of tracks, of which 1.11 miles are designated by the industry as main line and 3.40 miles as side tracks. All the tracks are located within the plant inclosure, except the track extending about 7,000 feet beyond the north end of the plant to the connection with the New York Central lines. This track extends over the land of the industry from which the right of way is leased, except a few short strips that are owned by the industrial railroad. All the right of way within the plant inclosure is also leased from the industry. The lease for this right of way was made by the American Tin Plate Company under date of May 17, 1898, and leases to the industrial railroad certain described real estate for a term of 99 years. The lease provides among other things that the industrial railroad shall, during the term of the lease, have the exclusive right of railroad entrance into and upon the grounds of the plant of the tin plate company and the doing of all the switching of all the freight deliverable to and from their plants and manufactory for the full period of the lease, and the industrial railroad agrees to perform such switching service in the proper manner whenever demanded by the tin plate company, as far as practicable, and that the compensation to the industrial railroad for all such switching shall be paid by the lines of railways delivering or receiving such freight, it being the intent and agreement of both parties that the tin plate company shall not be put to any expense for such switching service upon its property.

It is stated that the industrial railroad owns about 80 acres of right of way and land. This includes some building lots north of the plant

apparently utilized for storage tracks and for the tracks that extend beyond the plant inclosure at the south end; also the right of way for a proposed extension to Anderson, Ind., a distance of about 15 miles. At the south end of the plant the tracks of the Pennsylvania Company extend for some distance along the property line of the industry. The tracks of the industrial railroad extend for several hundred feet beyond the property line of the plant, but the actual track connection is apparently about 300 feet from the plant inclosure.

In addition to the standard-gauge tracks of the industrial railroad the tin plate company operates a system of narrow-gauge tracks for the distribution of material around the plant. A part of the standard-gauge track is equipped with a third rail for convenience in handling the narrow-gauge equipment. The equipment of the industrial railroad consists of 2 locomotives, 1 flat car, and 2 coal cars.

The cost or investment in the property as shown by the annual report for the year ending June 30, 1911, less depreciation, is \$102,477.81. The valuation placed on the property by a committee of engineers employed by the industry is stated to be \$98,075, but it is admitted that this valuation includes all of the right of way, except that on the line of the proposed extension to Anderson, Ind., when, as herein stated, a considerable part of the right of way is owned by the industry.

The principal service performed by the industrial railroad is the switching of empty and loaded cars between points of loading and unloading within the plant and the point of interchange with the connecting trunk lines. It does only a small part of the intermill switching, that service being performed by the industry with other power. It is admitted that the service of the industrial railroad differs from that originally performed by the trunk line only in that it is much more prompt and more efficiently meets the manufacturing requirements; otherwise it is the same character of work. There are spotting facilities for only four cars of coal at one time; therefore it is ordinarily necessary to spot cars of coal as often as three times a day. Occasionally there are emergency calls for coal, and the service must be conducted in such a way that prompt response can be made. The principal witness admitted that the trunk lines could perform the same service as the industrial railroad if they were so inclined. In-bound shipments of raw material must be placed promptly when actually required to meet the demands of the industrial operation, and the industrial railroad adjusts its switching service to meet the demands of the plant. The peculiar nature of the tin-plate business requires that a car containing bars of a certain dimension or size must be brought in at very frequent intervals and on extremely short notice. In other respects the requirements of the industry must be

met, and the industrial railroad, it is said, offers a better service than was formerly had from the trunk lines.

Previous to the incorporation of the industrial railroad the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad, as heretofore explained, owned all of the tracks in and around the plant and performed the switching for the American Tin Plate Company. The Lake Erie & Western at that time had no connection with the plant, but participated in the traffic in and out by absorbing the switching charges of the Pennsylvania Company, \$2 per car on inbound and \$4 per car on outbound business. When the industrial railroad was incorporated and took over the tracks in 1898 it adopted the same charges, \$2 per car on inbound and \$4 per car on outbound business. These charges are absorbed by the trunk lines. The charge for intermill switching for the industry is \$2 per car.

Cars are interchanged with the connecting trunk lines under the demurrage rule, demurrage being charged against the industry. It is stated that the industrial railroad has no demurrage rules of its own, but enforces the demurrage rules of the connecting trunk lines. The industrial railroad was formerly a member of the American Railway Association and at that time interchanged cars with the connecting trunk lines under the per diem rule and made reclaims.

During the year ending June 30, 1911, the industrial railroad handled 14,785 cars, from which it derived a revenue of \$20,201.86. Of this revenue, \$5,530.08 was received from the industry for interworks switching and \$14,671.78 from the trunk lines for interchange switching. The only traffic handled for outside interests was 25 cars of gravel, from which a revenue of \$51 was derived. In 1911 there was a dividend of \$4,000 paid, causing a deficit for the year of \$2,997.14, but there was an accumulated surplus from previous years of \$55,653.08, which left a net surplus on June 30, 1911, of \$52,655.94.

The rails of the two trunk lines extend to the property of the plant and can furnish all necessary facilities for bringing in raw material and taking out the manufactured product; and it is admitted that the only reason for organizing and conducting the industrial railroad is that a plant railroad under the immediate control of the industry is better adapted to the economical conduct of the manufacturing operations than any service the trunk lines can offer, and that by controlling the industrial road the service in connection with the inbound material and outbound product can be extended and controlled to meet the requirements of the industry.

MONONGAHELA CONNECTING RAILROAD COMPANY.

The Monongahela Connecting Railroad is perhaps, from an historical standpoint, the most important of any of the properties which

are parties to this proceeding. Here terminal allowances had their inception, and the growth of this industrial line fairly reflects the many advantages resulting from the granting of these allowances. In tracing the development of this remarkable operation it may not be inappropriate to detail a few of the facts that concern its early history and to relate some of the events which have had a direct bearing upon the trend of the whole iron and steel industry for more than 25 years.

In the early eighties Laughlin & Company, Limited, owned two blast furnaces, known as the Eliza furnaces, situated on the north bank of the Monongahela River in Pittsburgh. Their combined capacity was about 145 tons of iron per day, which at that time was considered a very large output. A year or two later an additional furnace was constructed and the daily capacity then amounted to about 250 tons. In the vicinity of the Eliza furnaces were several other industries not affiliated with Laughlin & Company, Limited, a coke-producing plant, some copper works, a rolling mill, gas works, and other manufactories. On the opposite side of the Monongahela River, down the stream, Jones & Laughlin, Limited, operated rolling mills and a steel plant. At that time there were only four railroads entering Pittsburgh. The Pittsburgh & Lake Erie Railroad came in on the south side of the river at Twenty-second street, terminating at the steel plant of Jones & Laughlin, Limited; the Pittsburgh, Virginia & Charleston Railroad (now known as the Monongahela division of the Pennsylvania Railroad) was also on the south side a short distance from the Pittsburgh & Lake Erie Railroad, and also terminating close to the steel works; extending up and down the north side of the river was the Baltimore & Ohio; and leading off from this line at a point near the furnace of Laughlin & Company, Limited, was the Pittsburgh Junction Railroad, an independent railroad later acquired by the Baltimore & Ohio.

There was no bridge by which the cars from either of the lines on the south side could be transferred to or from the two railroads on the north side. The Pittsburgh & Lake Erie Railroad could not reach the industries along the north shore, and there was no interchange connection with the Baltimore & Ohio, except by car ferry operating from Twenty-second street, south side, to Glenwood, nor could it reach the Pittsburgh Junction Railroad. The Pittsburgh, Virginia & Charleston Railroad was similarly situated, but had no car-ferry connection.

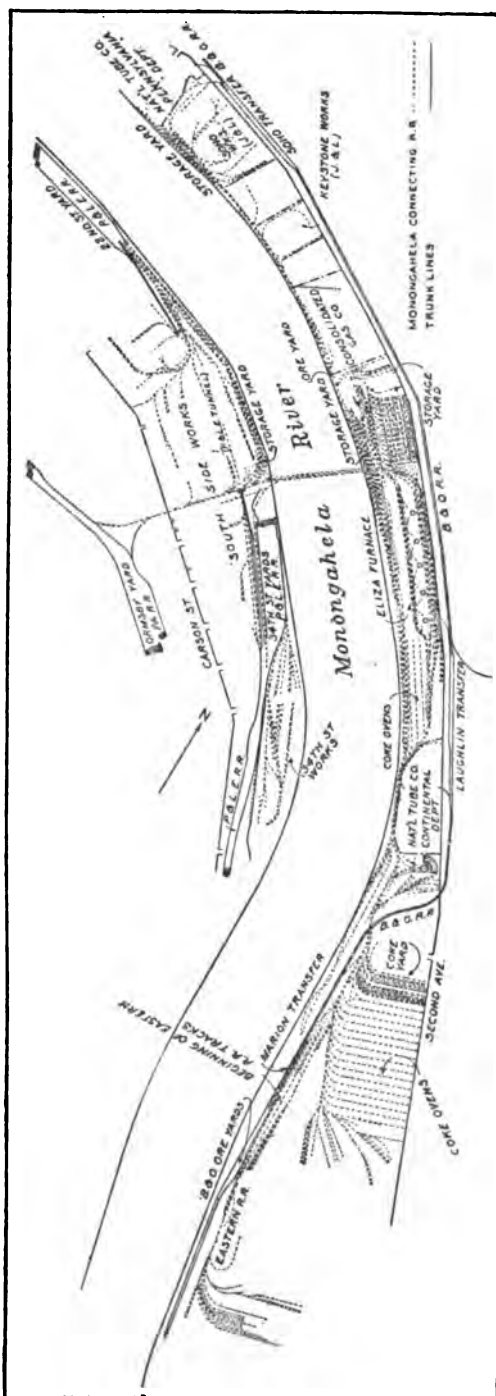
For many years the ore that was transported to Pittsburgh by rail was unloaded on the public team tracks of the various lines and hauled to the several furnaces in and around the city, to that of Laughlin & Company, Limited, among the others. The record con-

tains a number of references to the extent of the teaming that was necessary to convey ore and other raw material to the furnaces and the many difficulties encountered in handling the manufactured iron by wagon. At the argument counsel graphically described the long procession of horses slowly dragging the ore-laden wagons and the cumbrous pieces of manufactured iron through the streets of Pittsburgh, up and down the hills which are so characteristic of that city.

The Pittsburgh, Fort Wayne & Chicago Railway Company had its depot in Pittsburgh near the Allegheny River. The Baltimore & Ohio depot was situated on Trie street close to the Monongahela River, and the Pittsburgh & Lake Erie depot was on the south side near Smithfield street; so that in order to reach their rails there was a wagon haul of from one-half mile to four miles, according to the location of the mills and manufactories.

At the plants of Laughlin & Company, Limited, and Jones & Laughlin, Limited, teams were also used to move the raw materials between the different departments and to deliver the finished products to the railroads for shipment. Later, in order to facilitate the handling of the materials, rails were laid into and around the mills and warehouses of both companies. Power was installed, and for quite a while rail operations were conducted by the furnaces on the north side and the steel works on the south side independently of each other. Subsequently it seemed advisable to connect the two, so as to handle the materials from the blast furnaces that were used in the steel mills on the opposite side. A line was projected in the early part of 1885. Its purpose was not only to connect the two plants, but also to deliver to Laughlin & Company, Limited, on the north side, cars which were received over the Pittsburgh & Lake Erie Railroad and to afford a means of delivering the iron and other materials to the Pittsburgh & Lake Erie Railroad for shipment. The Monongahela Connecting Railroad Company was incorporated April 1, 1885, with a capital stock of \$30,000, which was subsequently increased to \$750,000.

A bridge across the Monongahela River was built in 1886, and upon its completion Jones & Laughlin, Limited, sold to the industrial railroad company its right of way on the south side of the river, and Laughlin & Company, Limited, on the north side, did likewise. The switching service performed before the Monongahela Connecting was built is still maintained at the south side department and at the Eliza furnaces on the north side, and the manner of serving the industries does not differ now in any respect from the service which was performed before the construction of the line connecting the two plants. Previous to the building of the bridge there a ferry was maintained for carrying pig metal across the river on flat boats in small cars like



mine cars. As soon as the rails were laid the metal was handled over the single-track railroad bridge. This arrangement, however, necessitated the reheating of the iron. Later the traffic of the two plants increased to such an extent that the single-track bridge could not accommodate it, consequently the piers were widened and an additional track was installed. About five years afterwards a complete reconstruction of the furnaces and plants took place. The Soho furnace and rolling mill at the western end of the Monongahela Connecting Railroad were purchased from Moorehead-McCleane Company, and the Eliza furnaces were rebuilt, their capacity being increased to 500 tons each. At this time also it was decided that there would be economy in using hot metal at the steel plant instead of rehandling the pig iron, and thereupon the piers of the double-track bridge were widened still farther and the abutments straightened in order to provide an additional track for the exclusive use of hot-metal trains. This improvement of the bridge amounted to the building of a separate hot-metal bridge, for the reason that the tracks are lined with firebrick and special provision has to be made for handling the molten iron. It must be moved as soon as it is drawn from the furnaces. Attention is directed to this separate operation, because previously the hot-metal trains were handled on a regular schedule and the frequency of the movement interfered with the use of the bridge for other purposes. Even though cars were moved between the two plants and interchanged with connecting lines at such times as would suit the convenience of the Jones & Laughlin Steel Company, there was constant hazard and oftentimes congestion due to the hot-metal movements.

During the construction of the bridge and the line connecting the plant of Laughlin & Company with the Pittsburgh & Lake Erie Railroad an arrangement was made between the Pittsburgh & Lake Erie Railroad and Mr. Henry A. Laughlin and his associates, which proved to be the basis of many subsequent contracts between industrial railroads and the trunk lines. This contract, entered into on August 10, 1886, provided for the payment to the Monongahela Connecting Railroad of 20 cents a ton on ore, \$1.50 per car on limestone, and \$2 for each car of coke. The amount of the allowance on ore from Lake Erie ports was, by the terms of the contract, contingent upon the transportation rate to Pittsburgh and provided a sliding scale in relation to the rate on lake ore. A year or so after the agreement became effective the ore rate was changed, and accordingly the allowance paid to the Monongahela Connecting was reduced to 16.8 cents per ton. It remained at that figure until the contract expired by its terms April 1, 1907. The agreement was restricted to the traffic of Laughlin & Company, Limited, whose Eliza furnace was the only plant reached on the north side of the river.

In 1888 the so-called branch lines of the Monongahela Connecting were built east and west from the Eliza furnace along the river front. The west branch extended to the Soho furnace, at about that time acquired by the Jones & Laughlin interests. The east branch reached a tract of land at Glenwood owned in the Laughlin family. In the same year an agreement was entered into between the Pittsburgh & Lake Erie Railroad Company and the Monongahela Connecting Railroad Company to interchange traffic for the other industries which were situated in the vicinity of Laughlin & Company's plant on the north side. An allowance of \$2.50 per loaded car was made by the Pittsburgh & Lake Erie on all traffic except the raw material used at furnaces, on which was paid, \$2.25 per car on ore, \$2 on pig metal, \$1.75 on coke, \$1.60 on limestone, and \$1.10 on coal. Although the service performed by the Monongahela Connecting Railroad was the same in both instances it will be observed that on the traffic of Laughlin & Company, Limited, the allowances were appreciably larger than those paid on the outside business. Coincident with the contract of 1888 was another between the same parties to protect the allowances on Jones & Laughlin traffic as provided in the 1886 agreement.

The existence of the 1886 contract between the Pittsburgh & Lake Erie and the Monongahela Connecting Railroad was not generally known in Pittsburgh until about 1888, when it was revealed in railroad circles, probably as the result of the rate publicity required by the interstate commerce act which had been passed in the meantime. The Baltimore & Ohio then undertook to make the payments specified in the 1888 contract not only to Laughlin & Company, Limited, but to all other blast furnaces in the Pittsburgh district served by it as well. The Pennsylvania soon followed the lead of the Baltimore & Ohio, so that to-day all blast furnaces in the Pittsburgh district receive what is known as the furnace allowance, that is, \$2.25 per car on ore, \$1.75 per car on coke, and \$1.60 per car on limestone. The record is not entirely clear on the point, but it is intimated that for a number of years prior to 1907 the allowance to all furnaces on ore was 16.8 cents per ton. Upon the expiration of the 1886 contract on April 1, 1907, the carriers applied the allowances provided in the 1888 contract as above recited to all furnaces, including those of Jones & Laughlin Steel Company, into which the firms of Laughlin & Company, Limited, and Jones & Laughlin, Limited, had been merged.

According to the agreement of 1888, which was to run for 50 years, the rates were subject to revision in five-year periods, and before the expiration of the 1908 period the Jones & Laughlin Steel Company gave notice to the Pittsburgh & Lake Erie Railroad Company that on account of the increase in the size of cars in general use on the

trunk lines a change from a car basis to a tonnage basis was desired. The capacity of the average freight car at the time the 1888 contract was entered into was in the neighborhood of 16 tons: it had increased in 20 years to nearly 50 tons. The negotiations were carried on for about a year and were finally concluded on April 1, 1909. According to the contract of that date, allowances of 10 cents a ton on pig iron and lower classified commodities are now paid to the Monongahela Connecting Railroad, and 15 cents per ton net or gross, as rated, on the finished products of a higher classification grade than pig iron. A clause was inserted in the 1909 agreement which made the new rates retroactive to the expiration of the five-year period on May 7, 1908, and the Pittsburgh & Lake Erie Railroad Company paid the Jones & Laughlin Steel Company about \$60,000 to cover the allowances on the new basis for the intervening period between the two contracts. Allowances are now paid by all of the trunk line connections of the Monongahela Connecting Railroad on the basis of the 1909 agreement.

The property of Jones & Laughlin Steel Company covers about 198 acres of ground, of which 128 acres are on the north side of the river and 70 acres on the south side. The average force employed by the industry is about 8,000 men. The Monongahela Connecting has a total operating trackage of 36.93 miles, of which 3.30 miles are the tracks of the Eastern Railroad Company, also owned by the Jones & Laughlin Steel Company and leased in entirety to the Monongahela Connecting. The equipment consists of 34 locomotives and 660 cars of various kinds. Much of the right of way is held under deeds or easements from Jones & Laughlin Steel Company. These deeds reserve to the grantor the right to relocate the tracks of the railroad as the convenience of the industry may require, and in accordance with this clause the tracks have been relocated to a considerable extent at various points, the expense being borne by the Monongahela Connecting Railroad Company. After the Monongahela Connecting Railroad was completed one of the points of connection with the Baltimore & Ohio was moved some distance from the works of Jones & Laughlin Steel Company, with the result that the haul from the Baltimore & Ohio to that plant was materially increased.

A considerable portion of the right of way of the Monongahela Connecting was situated on low, marshy ground along the river front. It has been filled in with refuse from time to time, so that at present the entire road is ballasted with slag, and most of the trestles have been filled in with waste material from the furnaces. There is practically no filling being done now, as the slag is granulated at the furnaces and delivered to trunk line connections for use along their right of way, there being very little more ground

available for dumping contiguous to the Monongahela Connecting on the north bank of the river.

The right of way transferred by the Jones & Laughlin Steel Company to the Monongahela Connecting Railroad Company was valued by an engineer who appeared as a witness at approximately \$25,000 an acre. At the time of the hearing the right of way held under deeds and easements embraced 26.38 acres, and under leases and agreements, 1.93 acres. The annual report for the year 1911 shows the total cost of road and equipment as \$2,524,020.09. The present valuation of the property and equipment was put by a witness at \$2,845,389. This includes the hot-metal bridge and all the property belonging to the Eastern Railroad which is operated by the Monongahela Connecting under leases. The Eastern Railroad also owns considerable real estate which, according to the testimony of the principal witness, was acquired for the purpose of ultimately extending the line to the great lakes. The capital stock of the Monongahela Connecting is now \$750,000 and there is a funded debt of \$685,000. Of the 7,500 shares of stock issued, Jones & Laughlin Steel Company owns 7,420 shares, the remaining 80 shares being held principally by persons connected with the steel company. The total amount realized from the sale of stock and securities was \$1,045,000; the total cost of the road and equipment, as previously stated, was \$2,524,000. It was admitted that the difference, approximately \$1,480,000, has been put back into the property from the earnings of the road from operation. During the same period the aggregate amount of dividends paid was \$1,045,500, of which \$655,500 was in cash and \$390,000 in stock. On June 30, 1911, there was an accumulated surplus of about \$1,232,000. In other words, on an original investment of about \$1,435,000, the earnings to June 30, 1911, as evidenced by dividends, accumulated surplus, and the sums put into the property for additions and betterments, aggregate about \$2,976,529. Similar results, although on a different scale, are shown throughout the record.

The Monongahela Connecting is a member of the per diem agreement of the American Railway Association, and it is allowed an arbitrary reclaim of four and one-half days. For the period of October, November, and December, 1906, and the years 1907 to 1911, inclusive, the excess of the reclaims received over the amount paid for per diem was \$18,489, or an average of about \$3,520 per year. The Jones & Laughlin Steel Company is a party to the average agreement. The free time begins to run when the cars are in the Monongahela Connecting yards ready for placement, or when they are offered by connecting trunk lines. For the year ending June 30, 1911, the total amount of demurrage paid by the steel company to its industrial railroad amounted to \$5,306.

This is another instance of the benefit derived by an industry from the reclaim arrangement between its industrial railroad and the connecting trunk lines. The industry gets the full advantage of the reclaim period, less the time actually required for switching the cars in and out, regardless of the limitations imposed by the demurrage rules, and even when demurrage is paid, as in this case, to the industrial railroad, it gets back into the treasury of the steel company in the dividends or accumulated surplus of the industrial line.

Class, commodity, and switching tariffs, as well as car demurrage regulations, are filed with the Commission. There is no depot for assembling less-than-carload freight and no rates are published for less-than-carload business. There are five public team tracks on which carload freight is loaded and unloaded. The Monongahela Connecting does not issue bills of lading; all movements between points on the line and to connecting carriers are handled on car cards. No passenger service is maintained. The accounts are kept in accordance with the Commission's requirements.

Shortly after the road commenced operation the business handled for concerns not in any way affiliated with Laughlin & Company, Limited, or Jones & Laughlin, Limited, is said to have amounted to 34 per cent of the total tonnage carried. Gradually Jones & Laughlin Steel Company, the successor of the two companies, absorbed the industries adjacent to its plants to such an extent that for the year ended June 30, 1911, only 3.49 per cent of the tonnage transported was for account of outside firms.

The National Tube Company is the largest outside interest located on the rails of the Monongahela Connecting and power is maintained by its two plants with which cars are moved from the interchange tracks of the Monongahela Connecting to the point of placement and from the industries to the interchange tracks for shipment. The National Tube Company's plants are each served also by the Baltimore & Ohio. The service does not differ in any essential respect from that performed by the Monongahela Connecting, but no allowance is made to the National Tube Company. The part of Pittsburgh through which the Monongahela Connecting runs is so congested that there is practically no opportunity for further industrial development on its tracks.

At the plants of Jones & Laughlin Steel Company all the inbound material is spotted by the Monongahela Connecting Railroad and outbound shipments are handled by the power of the Jones & Laughlin Steel Company to the plant interchange track and there taken by the Monongahela Connecting and classified into trainloads for delivery to connecting trunk lines. The maximum distance from the interchange with connecting trunk lines to the point of placement is 3.34 miles, the minimum distance is about 0.15 mile, the average movement being

approximately 2½ miles. The principal tonnage is iron ore which is received from the Pittsburgh & Lake Erie and the Pennsylvania Railroad on the south side and delivered by the Monongahela Connecting to the Eliza and Soho furnaces on the north side. The distance to the Eliza furnace is about 2½ miles and to the Soho furnace nearly three-fourths of a mile farther. The raw material brought in by the Baltimore & Ohio Railroad is delivered at the Glenwood yards on the north side and is hauled thence by the Monongahela Connecting about 1½ miles to the furnaces. The outbound products moving chiefly from the south-side plants to the Pittsburgh & Lake Erie are hauled approximately one-half mile. To the Baltimore & Ohio the distance is 1½ miles.

PENCOYD & PHILADELPHIA RAILROAD.

The American Bridge Company, a subsidiary of the United States Steel Corporation, has a large plant located on either side of the Schuylkill River at Philadelphia. This plant was originally owned by the A. & P. Roberts Company and was acquired by the bridge company by purchase. The two departments are connected by a bridge which was originally owned by the Wissahickon Bridge Company, but was later acquired by the Roberts company and by the latter assigned to its incorporated railroad, known as the Pencoyd & Philadelphia; the Wissahickon company, however, reserved certain rights of way and general rights for the public to cross from Philadelphia county over into Montgomery county. In connection with its industrial operations the bridge company uses the tracks of the Pencoyd & Philadelphia, extending from a point called Pencoyd across the Schuylkill River to Philadelphia. The industrial railroad has a total trackage of 3.15 miles, of which one-tenth of a mile, located on the bridge over the Schuylkill River, is owned, and 3.05 miles are leased from the American Bridge Company for an annual rental of \$1,000 per year and the maintenance of the track.

The railroad and the equipment was purchased from the Roberts Company with the plant; the equipment was later transferred to the industrial railroad. The present value of the railroad and equipment is stated to be \$66,102.19.

The trunk line connections are the Pennsylvania Railroad and the Philadelphia & Reading at the north end of the plant and the Philadelphia & Reading at the south end of the plant. The tracks of neither of the trunk lines extend into the plant, and it is not apparent on the record that they ever did, but the tracks of the Philadelphia & Reading parallel its property lines. In addition to the standard-gauge tracks of the industrial railroad the bridge company has 8 miles of narrow-gauge tracks and 14 narrow-gauge engines,

which are used for the movement of material between the various parts of the plant. The plant of the bridge company consists of open-hearth furnaces and departments for the manufacture of structural material, machinery, tools, steel castings, iron castings, bronze and brass castings, steel billets, and practically everything that goes into construction of steel buildings or bridges. The acreage covered by the various departments is not stated of record.

There are no other industries served by the industrial railroad. The general character of its service is the switching of empty and loaded cars between the trunk line connections and the various points of placement within the plant. It also performs all internal switching at the plant. It is stated that prior to May 1, 1911, the Pennsylvania Railroad did all the spotting of cars at the north end of the plant for its own traffic. At that time neither the industrial railroad nor the bridge company maintained power at the north end of the plant to do the spotting in the daytime. At the south end of the plant cars of pig iron, scrap iron, ore, and limestone are sometimes placed by the Philadelphia & Reading for unloading at the reserve stock pile without being switched, and all the cars for the furnaces are delivered and spotted by the Philadelphia & Reading; this delivery could not be made otherwise unless the industrial railroad engines went out on the main line of the Philadelphia & Reading. All the outbound traffic of the plant is handled by the industrial railroad. It is stated of record that for the year ending June 30, 1911, there were 603,000 tons interchanged with the trunk lines and 800,000 tons handled in intermill switching. The industrial railroad does not receive terminal allowances or divisions of any character, and has no per diem or reclaim arrangement with the trunk lines. The demurrage rules applied by the trunk lines and the amount of demurrage paid by the industry to the trunk lines or to the industrial railroad is not stated of record.

For the year ending June 30, 1911, the total operating revenue was \$39,223.97; the operating expenses exceeded this amount by \$9,727.19.

UNION RAILROAD.

The history of industrial railroad development presents in no single instance a more striking example than that of the Union Railroad of Pittsburgh, nor one that more clearly illustrates the benefits and profits that accrue to an industry through the operation of its railroad department. The tonnage handled by the Union Railroad, which is greater than that of many railroads classed as trunk lines, reflects the productive capacity of the controlling industry, by which it is mainly contributed in the form of inbound raw material and outbound manufactured product. It may be said also that the correla-

tive financial conditions disclosed on the record make it clear that the railroad property and the industrial plant represent one investment, a separate identity being established only through book entries or other device that gives it the form but not the substance of a separate enterprise.

The Carnegie Steel Company, a subsidiary company of the United States Steel Corporation, has an aggregation of plants operated as a unit for the manufacture of iron, steel, and other products, located on either side of the Monongahela River in the Pittsburgh district. The separate departments of this plant are designated as the Edgar Thomson works, the Duquesne works, the Homestead steel works, the Howard axle works, and the Carrie furnaces. In addition to these departments the steel company operates a briquetting plant and a coal dock. At each of these plants or departments there is a system of yard tracks and sidings which, with the exception of the tracks of the Howard axle works, formerly connected with one or more trunk lines at the plant; the service between the points of interchange and the point of placement within the plant was performed with the power of the industry. With the expansion and the growth of the industry it became apparent that for the purpose of more economical operation and to provide a means of connecting the several departments with each other and to give each an outlet over any one of the several contiguous trunk lines the separate plant tracks must be connected with each other; in July, 1894, the Union Railroad was incorporated and built a line connecting with the tracks at all the plants.

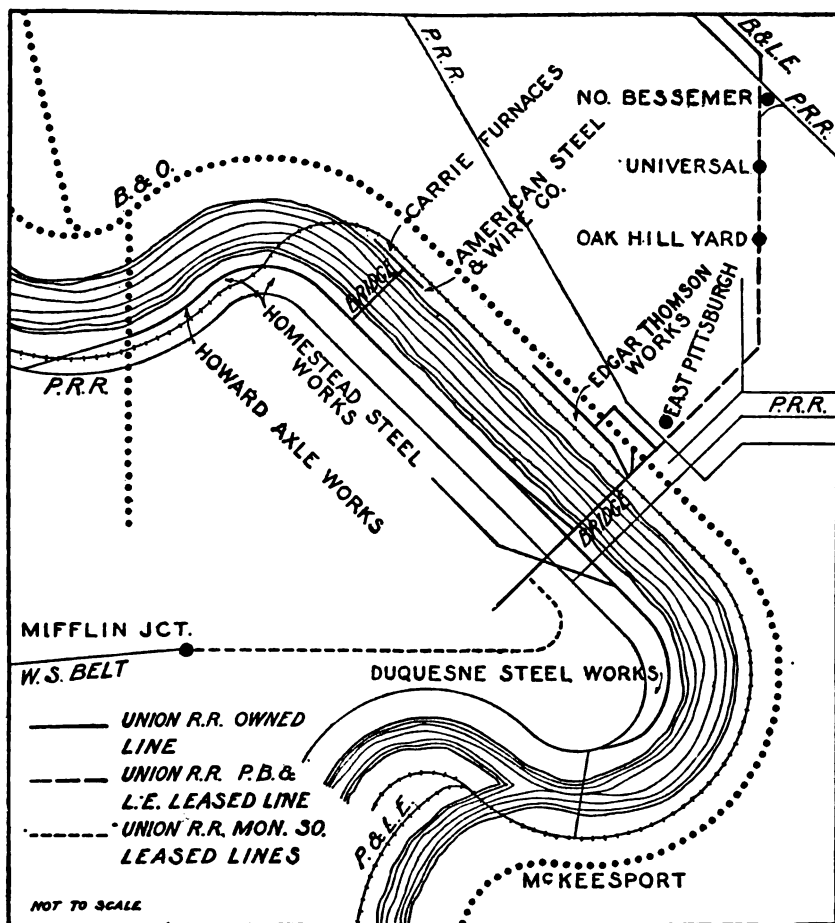
It does not appear from the record that there is any substantial ground for the assumption that this road is a necessary facility for the shipping public; it is primarily a facility of the industrial operations of the controlling interests and the service performed for others is incidental. The plants and the tracks of the industrial railroad and connecting trunk lines occupy all the available space and the topographical condition of the country here is such that no room is left between the river and the hills, so that it would be practically impossible to provide a location for an independent industry; there were not at the time of the hearing, nor is it apparent that there ever have been on the line originally constructed, any industries other than the Carnegie Steel Company or affiliated interests; the claim that shipping facilities are provided for the public must necessarily be based on the comparatively small amount of outside traffic originating or terminating on or passing over the leased lines. At the time of the hearing the capital stock of the Union Railroad was stated to be \$2,000,000, funded debt \$4,350,000. Of this funded debt \$2,000,000 is in first mortgage bonds and \$2,350,000

in equipment trust bonds. The \$2,000,000 first mortgage bonds were issued to the Carnegie Steel Company in payment for \$1,125,000 advanced by the steel company to the Union Railroad. As the transaction stands on the books of the Union Railroad \$1,500,000 in bonds issued in August, 1896, were taken by the Carnegie Steel Company at a discount of \$750,000 and \$500,000 issued in October, 1897, at a discount of \$125,000, making a total of \$2,000,000 in bonds taken by the steel company at a discount of \$875,000, the net amount realized by the Union Railroad from the \$2,000,000 in bonds being \$1,125,000, for which amount it received a credit in open account on the books of the steel company.

At the time of this bond issue there was a charge on the books of the steel company against the Union Railroad Company of \$1,934,040. An amount equal to the difference between this sum and the \$1,125,000 paid by the issue of the \$2,000,000 in bonds, is admitted to have been paid to the Carnegie Steel Company since June 30, 1911, out of the accumulated surplus of the industrial railroad. It is admitted that the account of the steel company includes some right of way, sidings, and yards sold by the steel company to the industrial railroad at a valuation of \$50,000 per acre. In addition to the bond issues the Union Railroad had a floating debt on June 30, 1911, amounting to \$5,352,737.50, bearing interest at 5 per cent per annum of which \$1,638,840.28 was due to the Carnegie Steel Company, \$3,112,897.22 to the United States Steel Corporation and \$600,000 to the Bessemer & Lake Erie Railroad, a subsidiary of the steel company. It is stated of record that since June 30, 1911, the debt to the steel company has been reduced to \$814,743.45. The debt to the steel company and to the Bessemer & Lake Erie covers current expenditures for improvements and running expenses. The debt due to the United States Steel Corporation covers 2,500 steel cars at cost.

The total operated trackage of the Union Railroad on June 30, 1911, was 191.17 miles, of which 56.35 miles are designated as main line and 134.82 miles as yard tracks and sidings. Of this total mileage 77.74 miles are owned and 113.43 miles are leased. The leased tracks consist of 40.49 miles owned by the Monongahela Southern Railroad, the entire capital stock of which is owned by the Union Railroad Company, the main track and sidings of the Bessemer & Lake Erie Railroad between East Pittsburgh and North Bessemer aggregating 71.94 miles, and the Slackwater Connecting Railroad owned by the steel company, having a total trackage of 1 mile. In addition to this leased mileage the Union Railroad leases from the Carnegie Steel Company the outside tracks at each of the plants, thereby effectually preventing the trunk lines from having access to the plants, except over the tracks of the industrial railroad.

In addition to the tracks operated by the Union Railroad the steel company has a system of private tracks at each of its plants which it operates with its own equipment as a plant facility. These tracks aggregate 112.51 miles of standard gauge and 33.30 miles of narrow gauge. It is stated of record that these figures do not include any of the tracks that are leased to the Union Railroad and that all these private tracks are maintained by the steel company. The



standard-gauge tracks are used by the industrial railroad for spotting and moving cars and the same tracks are used by the steel company with its own power for the internal work. The narrow-gauge tracks are operated exclusively by the steel company with its own power for intermill work. The equipment of the Union Railroad consists of 122 locomotives, 6 passenger cars, and 5,431 freight cars. Of the freight cars 637 are used exclusively in plant service and 4,794 are 29 I. C. C.

used principally in the ore trade, but are also used more or less in the interchange service with connecting trunk lines. The equipment owned and operated by the Carnegie Steel Company consists of 81 narrow-gauge and 12 standard-gauge locomotives, which it uses in the operation of its own tracks in plant service. The Union Railroad leases to the steel company 300 steel gondola cars of 100,000 pounds capacity for a rental of 35 cents per day, the steel company paying the expense of keeping them in repair.

A large part of the right of way for the industrial railroad was purchased from the steel company at a uniform price of \$50,000 an acre, with the exception of 2½ acres, for which \$10,000 an acre was paid. The total acreage of the right of way so purchased amounted to 55 and a fraction acres, and the aggregate amount paid was \$2,645,850. In addition to the right of way so purchased, the industrial railroad leases from the steel company an aggregate of 31 and a fraction acres within the various plants at an estimated value of \$50,000 per acre, the total value being arbitrarily fixed at \$1,552,050, for which a rental is paid, on the basis of 6 per cent per annum on that valuation, amounting to \$93,123 per year. One witness testified that the amount paid to the steel company for the right of way included \$470,815 for grading and masonry, which would reduce the amount actually paid for the property to the basis of \$39,691 per acre, instead of \$50,000; he admitted, however, that the vouchers and records of the Union Railroad show that the land was purchased on the basis of \$50,000 an acre, and when it is considered that the lands were largely paid for in bonds on which the discount has been reviewed the railroad must have paid, at least on paper, something in excess of \$50,000 an acre. It may be well at this point to say that the conclusion reached by the engineers hereinafter referred to, who made a valuation of the property of the Union Railroad, was that \$15,000 an acre was a fair price at this time for the right of way that was purchased from the steel company.

The Union Railroad has two bridges across the Monongahela River, one at Rankin, over which it reaches the Carrie furnace, and the other at Port Perry, over which it reaches the Edgar Thomson works; it also has a connection with the leased line of the Bessemer & Lake Erie at East Pittsburgh. Each of these bridges is equipped with separate tracks, lined with fire brick, and these tracks are used exclusively for the movement of hot metal, the main tracks on each bridge being used in ordinary switching service.

The Union Railroad maintains a number of yards, which have an aggregate capacity for placing or storing 19,328 cars, and these yards are used almost exclusively for classifying and storing cars of material for the convenience of the industry. It is stated of record that

when cars of inbound material are placed in these yards for storage, the industrial railroad receives its regular charge the same as it would if placed at the unloading point, and when a car is taken out of the storage yards and moved to the plant for use, it is treated as a plant movement, a charge being made against the steel company.

The record is somewhat obscure concerning the actual value of the property of the industrial railroad; the property accounts on the books as of June 30, 1911, show a total investment of \$17,242,110.88. In an exhibit filed by the principal witness, the book value of the property on June 30, 1911, was said to be \$16,314,286.47, to which, it was stated, should be added \$538,589.88 expended for betterments and improvements prior to June 30, 1911, and charged to profit and loss, making the total investment, or book value of the property June 30, 1911, \$16,852,876.35. In 1908 a valuation was made of the physical property of the Union Railroad by a committee of experts representing the trunk lines. At the hearing in this proceeding the engineers employed by this committee appeared as witnesses for the industrial railroads to testify to the value of the properties. These witnesses placed the total valuation of the physical property of the Union Railroad on June 30, 1911, at \$18,224,233. This is the valuation originally made in 1908, at which time it was fixed at \$16,775,907, to which was added \$2,148,326, expended since that date, to arrive at the valuation on June 30, 1911. It was admitted that the valuation made by the engineers included the tracks owned by the Carnegie Steel Company and by the Bessemer & Lake Erie Railroad that were leased to the Union Railroad. As will be hereinafter explained, the lands along the river, through which the tracks of the industrial railroad extend, were to a large extent made available by filling with slag and refuse from the furnaces of the steel company and, by selling or leasing these lands to its incorporated railroad company at an exorbitant figure, the steel company was not only relieved of the expense of disposing of its waste material, but derived a large profit which reduced the cost of manufacture; this transaction also resulted in a considerable increase in the capitalization of its incorporated railroad.

An analysis of the capital investment of the industrial railroad as made by the Commission's examiner shows that it received for its capital stock \$2,000,000, for its first-mortgage bonds \$1,125,000, for its equipment trust obligation \$2,350,000, amount paid for the stock of the Monongahela Southern Railroad \$160,000, amount advanced to the Monongahela Southern for construction purposes, including the bonds of that company, \$1,577,584.53, amount advanced by the steel company and other subsidiaries \$4,752,737.50, making the total that has been received from the sale of securities and in advances for

construction \$11,965,332.03 as of June 30, 1911. These figures were substantially verified by a witness for the industrial railroad. The difference between this amount of actual investment, \$11,965,332.03, and the amount of \$17,242,110.88 shown in the property accounts of the Union Railroad on June 30, 1911, is \$5,276,788.85. It is admitted of record that substantially this amount was paid out of the earnings of the Union Railroad, and in addition thereto a further reduction of \$805,000 of the obligation due to the Carnegie Steel Company has been paid out of the accumulated surplus of the Union Railroad since the examiner's report.

The record shows that there was expended and charged to profit and loss account on the books of the Union Railroad \$1,209,544.15 for additions and betterments on the tracks leased from the Bessemer & Lake Erie between East Pittsburgh and North Bessemer. There was also charged to profit and loss account on the books of the Union Railroad \$4,327.43 for additions and betterments on the leased line of the Monongahela Southern, and it is not apparent that these expenditures for additions and betterments appear in the property accounts of the roads for which the expenditures were made. In explaining the disposition on the books of the expenditures made for additions and betterments to the leased lines, the witness stated that such disposition was approved by the statistician of the Commission in a letter dated September 23, 1909. A copy of this letter, filed with the record, does not confirm this statement, but on the contrary the letter states that expenditures made by the lessees for improvements on leased properties must be considered as additional rent paid for the use of the property. The letter also states that the lessor company should charge these amounts to additions and betterments, whether made by the lessee or lessor.

The Union Railroad has five separate connections with the Pennsylvania Railroad, four with the Pittsburgh & Lake Erie, and two with the Baltimore & Ohio, one with the Bessemer & Lake Erie, and one with the West Side Belt, through which it reaches the Wabash. The connection with the West Side Belt is made at Mifflin Junction, the western terminus of the leased line of the Monongahela Southern. The West Side Belt also connects with the St. Clair Terminal Railroad, which is owned by the Carnegie Steel Company and serves a separately operated plant of the steel company at Clairton, Pennsylvania.

There is an interesting history connected with the Monongahela Southern Railroad, the entire capital stock of which is owned by the Union Railroad; its separate corporate identity is maintained, but it is leased to and operated as a part of the Union Railroad. It was incorporated in February, 1897, by outside interests who started to

acquire a right of way. The charter rights of this road were purchased by the steel company before the construction of the tracks was commenced. About 1898 the steel company bought the low lands in the vicinity of the present point of connection between the Monongahela Southern and the Union Railroad, and built tracks for about two miles to provide a dumping ground for the slag and other refuse from the furnaces. After the purchase of the charter rights of the Monongahela Southern its tracks were extended from time to time for the purpose of providing additional dumping ground, and the Monongahela Southern was used exclusively for this purpose for about eight years, during which period the low lands were raised to a proper grade and thus afforded considerable additional space for locating yards and tracks. The line of the Monongahela Southern extends up a ravine known as Thomson Run, and the land on either side of the right of way has been acquired by the steel company to provide dumping grounds for the future. It may be well to state here that the disposition of slag and other waste materials of a great steel plant is a matter of the utmost importance and for this purpose marsh lands and low grounds are acquired. These low lands are usually more or less distant from the plant and can be reached economically only by means of an industrial railroad, and when filled up to grade are either used by the industry or sold to the industrial railroad at a large price for yards, which in turn are used for the purposes of the industry; in some cases the lands are sold to outside interests. In this case the industrial railroad is built along the bank of the Monongahela River on top of a slag wall varying from 20 to 40 feet in depth and running approximately eight miles along the river. The slag used for this purpose was the refuse from the various plants and is a source of expense for its disposition to many other pig-iron manufacturers. To the Carnegie Steel Company through its ownership and capitalization of the Union Railroad the waste and refuse from the furnaces have become a source of immense profit. The superintendent testified that after every available space of the original uneven surface was filled with slag the steel company acquired the lands along Thomson Run, above referred to. These lands after being filled a depth of 80 feet in some places became the right of way of the Monongahela Southern.

The Monongahela division of the Pennsylvania Railroad passes along the east side of the Howard axle works, through the southern part of the Homestead works, thence along the Monongahela River to where the tracks join the property line on the south side of the Duquesne works. It then crosses the Monongahela River on its own bridge near the bridge of the Union Railroad at Port Perry and passes along the east side of the Edgar Thomson works, where it

connects with the main line of the Pennsylvania, which extends along the north side of the Edgar Thomson works. On the south side of the river the Union Railroad extends parallel to and between the Monongahela division of the Pennsylvania Railroad and the river. The Pennsylvania formerly had track connection at the Homestead, Duquesne, and Edgar Thomson works and received and delivered cars directly at the plants. The service of switching the cars between the points of placement within the plant and the point of connection with the Pennsylvania tracks was at that time performed with the power of either the trunk line or the industry; but since the outside tracks at each of the plants have been leased to the industrial railroad the trunk line does not have direct access to the plants, and all switching between the trunk lines and the point of placement within the plant is performed by the industrial railroad.

The Pittsburgh & Lake Erie extends along the north and east side of the Howard axle works, then in a northerly direction across the Monongahela River and along the north side of the Carrie furnace, thence in an easterly direction to the Edgar Thomson works, where the tracks join the property line of the plant. At the Edgar Thomson works the Pittsburgh & Lake Erie extends between the industrial railroad tracks and the river; the line originally passed through the works, but the right of way was relocated eight years ago and the tracks that formerly extended into the works taken out; the cars for this plant are now received and delivered at another interchange point. The reason for the relocation of these tracks, or at whose expense it was made, is not stated of record, but it is a reasonable assumption that it was done for the convenience and at the expense of the steel company or the industrial railroad. The tracks of the Pittsburgh & Lake Erie pass through the Homestead works at an elevation of about 16 feet, and all traffic to and from this plant is interchanged with the Pittsburgh & Lake Erie about two miles distant. The Pittsburgh & Lake Erie also has direct track connection with the plant of the American Steel & Wire Company near the Carrie furnace.

The Baltimore & Ohio tracks extend along the north side of the Carrie furnace to and directly through the center of the Edgar Thomson plant. This road also has direct track connection with the plant of the American Steel & Wire Company near the Carrie furnace.

The Baltimore & Ohio and the Pittsburgh & Lake Erie formerly served the plant of the Carrie furnace over a joint track owned by the two trunk lines. The traffic was then handled by the power of the industry from and to this joint track. The Slackwater Connecting road which extended between this joint track and the furnace

property was the terminal road of the old Carrie Furnace Company before the property was acquired by the Carnegie Steel Company. The Slackwater Connecting is now leased to and operated by the Union Railroad, thereby excluding the trunk lines from access to this plant except over the rails of the industrial railroad.

These statements afford a striking illustration of the advantage to a large industrial operation of joining up the widely separated plants or departments by means of a system of tracks owned by the controlling interests. The relocation of the trunk line tracks and their exclusion from the plants, resulting from the incorporation of the plant tracks, emphasize the industrial necessity of a plant railroad, and that its participation in the through rates is merely a device by which the industry is relieved of the cost of maintaining and operating what is essentially a plant facility. It seems clear on the record in this proceeding that the extension of the tracks and the expansion of the railroad operations was made necessary by the growth and expansion of the industrial operations. As the production of the plants grew the demands of hot-metal service, the prompt movement of material from one plant or department to another, and the prompt placement of inbound raw material at the furnaces became more insistent, and the service offered by the trunk lines was wholly inadequate from an industrial standpoint.

An important connection of the Union Railroad is the Bessemer & Lake Erie, which is also controlled by the Carnegie Steel Company. The original point of connection was at East Pittsburgh, near the Edgar Thomson works, but since the lease to the industrial railroad of the tracks between East Pittsburgh and North Bessemer the connection is made at the latter point. The chief traffic of the Bessemer & Lake Erie is ore for the United States Steel Corporation and its subsidiaries, and it also handles a considerable quantity of limestone and coal for the same interests. It has a large traffic in coal from the Pittsburgh district to the lake ports, and a considerable portion of this traffic is handled by the industrial railroad as an intermediate line. In this connection it is stated of record that about 50 per cent of the cars loaded with coal that are delivered to the Bessemer & Lake Erie by the industrial railroad go to Conneaut Harbor and are loaded back with ore for the steel company.

In addition to the plants of the Carnegie Steel Company the industrial railroad serves the American Steel & Wire Company and the Universal Portland Cement Company, which are also subsidiary companies of the United States Steel Corporation. The industries served by the industrial railroad other than those of the controlling interest are the Pittsburgh Coal Company at Gascola, New York &

Cleveland Gas Coal Company at Oak Hill, Central Supply Company at Greensburg avenue, Monongahela River Consolidated Coal Company and Mifflin mine No. 2 near Mifflin. All of the coal mines are more or less worked out and some of them have not been operated for several years. It also serves the Rogers Sand Company, Slag Products Company, W. S. Hays, and Homestead water works. The Rogers Sand Company and the Homestead water works are the only industries located on the original Union Railroad property that are not constituent companies of the United States Steel Corporation.

Of the affiliated industries of the steel company the briquetting plant is located on the Monongahela Southern branch and has been operated by the steel company for about two years. The material used at this plant is the flue dust which comes from the Carrie furnace, the Edgar Thomson and Duquesne plants. The output of the briquetting plant, about 400 tons a day, is used at the furnaces of the steel company. There was an accumulation of over 600,000 tons of this flue dust before the briquetting plant was started. The Universal Portland Cement Company's plant is located at a point called Universal on the line leased from the Bessemer & Lake Erie, and is exclusively served by the industrial railroad. This plant was built in 1906, and has a capacity of about 10,000 barrels of cement a day. The average tonnage handled by the industrial railroad in and out of this plant is about 4,000 tons a day. The principal inbound traffic is granulated slag, limestone, coal, and stucco. The slag comes from the different furnace plants, principally from the Carrie furnace. The limestone all comes from some point on the Bessemer & Lake Erie, and is delivered to the industrial railroad at North Bessemer. The coal comes from various points, but at the time of the hearing it was coming from the Baltimore & Ohio at Port Perry transfer. A large part of the limestone is produced by a company in which the steel company has an interest, and practically all of the limestone comes from quarries that are operated by a subsidiary of the United States Steel Corporation.

It is admitted that the plant of the Universal Portland Cement Company was located on the line leased from the Bessemer & Lake Erie after the long-term lease was made, and since the raw material used at the cement plant consists chiefly of slag from the furnace of the steel company, it may fairly be inferred that one reason for locating the plant at a considerable distance from the furnace was to provide for a haul by the industrial railroad of the inbound raw material and the outbound manufactured products. It may also be said that the incorporation of a cement company and the erection of a plant were simply a means by which the steel company made its operation more efficient and profitable by turning slag, a waste-product otherwise

useless, into a source of revenue. In other words, although separately incorporated the cement company is essentially a part of the steel industry, the means by which additional income accrues from the manufacturing operations of the steel industry.

Under normal conditions the various plants of the Carnegie Steel Company, which are served by the industrial railroad, employs an aggregate of 17,826 men; the industrial railroad employs 58 engineers, 87 firemen, 58 conductors, 127 brakemen, 48 car inspectors, 13 yardmasters, and 924 others; a total of 1,315 men.

In addition to the switching service for the plants of the steel company and others, the industrial railroad conducts, as necessary facilities of the industry, the Duquesne coal docks, a scrap yard, and a loading and unloading service in the storage yard of the steel company.

The movements of coal over the Duquesne dock destined to others than the controlling interests began in August, 1912, after the hearings. During the months of August and September, 1912, there were handled over the Duquesne coal dock 116,179 tons of coal for the Pittsburgh Coal Company. This coal was translake shipment by the Conneaut Harbor route, the Union Railroad, and the Bessemer & Lake Erie. Prior to that time shipments of coal over this dock that moved off the line of the Union Railroad were very few. It is stated that the Union Railroad expects to handle about 5,000 tons of coal per day for outside interests during the year 1913 and expects to considerably enlarge the coal dock at a cost of \$267,000. It is stated that there is in contemplation an extension of the Montour Railroad, owned by the Pittsburgh Coal Company, to a connection with the Union Railroad at Mifflin. Through this arrangement it is said that there will be an approximate movement of several million tons of coal per annum from the mines of the Pittsburgh Coal Company by way of the Union and the Bessemer & Lake Erie, destined principally to upper lake points. This traffic will move over the Montour Railroad to Mifflin, thence over the Union Railroad to North Bessemer, and over the Bessemer & Lake Erie to the lake ports. The movement will be made under a contract between the Montour Railroad and the Bessemer & Lake Erie Railroad.

The details of the switching service performed by the Union Railroad during the year ending June 30, 1911, is shown on the exhibit filed of record as follows:

Switching between the plants and the trunk lines, 445,863 cars, earning a revenue of \$2,725,025.79; intra and inter plant switching, 433,292 cars, earning a revenue of \$578,363.46; switching between connecting trunk lines, 36,541 cars, earning a revenue of \$198,966.63; public switching, 23,354 cars, earning a revenue of \$119,574.86. Total number of cars handled, 939,050; total switching revenue \$3,621,930.74.

This statement indicates that 93.62 per cent of the cars and 91.20 per cent of the revenue applies to service performed for the controlling interests, and 6.38 per cent of the cars and 8.80 per cent of the revenue applies to service for others than the controlling interests; this, however, includes the movement of ore to the plant of the steel company at Clairton. The statement also indicates that the average revenue per car for interchange switching was \$6.11; for intra and inter plant switching, \$1.33; for switching between connecting railroads, \$5.44; and for public switching, \$5.12.

The interchange switching consists of making one placement of the car or of taking out from the point of loading to the interchange tracks with the trunk line, while the internal switching consists of moving the car from the point of the first placement to another point for the convenience of the industry, and a charge is made for each of these subsequent movements. The average internal movement is from 100 to 400 feet, while the average interchange movement, including local business, is about 5.37 miles. This average is high because of the long haul to the Bessemer & Lake Erie connection, but as stated the latter part of the haul is over the rails of the Bessemer & Lake Erie under lease.

The detail of the revenue tonnage handled by the industrial railroad during the year ending June 30, 1911, is stated of record to be lake ore, 7,097,363 tons; foreign ore, 6,781 tons; coal, 1,350,973 tons; coke, 3,404,707 tons; limestone, 2,610,569 tons; miscellaneous, 5,825,275 tons; a total interchange with connecting trunk lines of 20,295,668 tons; and the total tonnage other than interchange amounted to 8,793,782 tons, making the total of all revenue freight handled 29,089,450 tons, of which 14,418,059 tons were inbound, 5,877,241 tons outbound, and 8,794,150 tons local to the industrial railroad. Of the total tonnage handled, 94.03 per cent was for constituent companies and 5.97 per cent for nonconstituent companies. During the year 1910 the total revenue tonnage was 33,129,298 tons, of which 94.21 per cent was for the controlling interest and 5.79 per cent for others.

Practically all the lake ore was received over the Bessemer & Lake Erie; very little, if any, moved over other lines. It was handled by the industrial railroad from the interchange point to the furnace; or, if consigned to the Clairton plant, delivered to the West Side Belt and by that line to the St. Clair Terminal. The coal was principally received over the Baltimore & Ohio at Bessemer and over the Wabash-Pittsburgh Terminal by way of the West Side Belt at Mifflin; very little coal is received over the Pennsylvania. The coke was received over the Pennsylvania, Baltimore & Ohio, and the Pittsburgh & Lake Erie; none of the coke moved over the Besse-

mer & Lake Erie. The limestone is received over the Pennsylvania, Baltimore & Ohio, Pittsburgh & Lake Erie, and the Bessemer & Lake Erie. The balance of the tonnage includes such items as sheet iron, machinery, finished products outbound, billets, pig iron, etc., and also includes shipments from the Universal Portland Cement Company's plant.

It is stated of record that there is a superintendent of transportation at each plant who has supervision over the internal switching, the placing of cars at points of loading and unloading, and the dispatching of cars. It is essential that this work should be done under one superintendent and one management. It is said that the service designated as a terminal haul is so interlaced with the internal switching that it would be impossible to have two men handle it with any degree of satisfaction. The superintendent who does that work is carried on the steel company's pay roll, and the amount of his pay is apportioned between the industrial railroad and the industry. It is stated that this superintendent in order to act efficiently must keep in close touch with the requirements of the furnace, the mill, or the plant. He is in no way subject to the orders of the industrial railroad; and while he is a joint official of the Union Railroad and the Carnegie Steel Company, he is in complete control of the mill property and is in sole charge of the internal switching.

The internal service is not performed on a tariff basis. It is so interwoven with the interchange switching service that it is apparently not feasible to separate the work and make a separate charge for each form of service. Therefore the Carnegie Steel Company pays all the bills in the first instance, and bills the entire amount against the Union Railroad, which in turn distributes it as between the interchange service and the plant service, and bills back against the Carnegie Steel Company for the proportion applicable to the plant service. The witness admitted that the charge against the Carnegie Steel Company for interplant service does not include a charge for interest on the investment in equipment working in that service and loaned by the Union Railroad Company to the Carnegie Steel Company for that work, but there is a charge for depreciation on the locomotives employed in that service in the same proportion that the switching charge is made. The locomotives are used in the plant switching and in setting in and taking out cars, and the depreciation charge is divided as between these two parts of the service. The cost of maintaining these locomotives is borne by the Union Railroad, but the Carnegie Steel Company bears a proportion of the expense. All cost for repairs to the locomotives is based on the same method of division, so that the net result is that there is no profit on the internal service performed by the Union Railroad.

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road; it is done at cost, and the cost does not include the item of interest on the investment in equipment. As a matter of fact, the system of bookkeeping results in the steel company having its plant switching performed at less than the actual cost of the service. This is another illustration of the fact that upon the broader point of view a large industry with a plant railroad as a necessary part of its plant equipment is entirely relieved of this important part of its manufacturing cost and in that way earns a large profit from it out of the rates of the trunk line carriers.

In connection with the plant switching the steel company pays a portion of the salaries and wages of the superintendents, and all the salaries of the engineers, firemen, trainmen, yardmasters, yard clerks, weighmaster, and also pays for the repairs to the engines, furnishes the fuel, oil, waste, and all supplies, but charges to and bills against the industrial railroad for a proportion of these expenses. It is stated that the Union Railroad does not perform any service free for the proprietary companies. A charge is made for each plant movement including the movement of the refuse material, excepting in cases where the refuse material is used by the Union Railroad in filling for itself, no charge being made by the Union Railroad for hauling slag, dirt, ashes, or other refuse material on its own right of way. A considerable part of the open-hearth slag and all kinds of refuse from the different plants is wasted, and it is stated that a large quantity of refuse material from the furnace plants is used principally for filling up low places on the property of the steel company and the yards of the industrial railroad. The industrial railroad makes a charge for switching this material to the dumping grounds or to the connecting carriers, but makes no charge on the material that is used for filling its own right of way or lands.

The cold material is taken to Universal and North Bessemer, where it is used for filling the yards. The road at that point is located in the valley and filling is necessary in order to elevate the land to the proper grade for the tracks. Before the Union Railroad bridge was built the hot slag from the Edgar Thomson works was disposed of around the Bessemer yard and as filling along the river front. When this waste material is used by the industrial railroad for this purpose no charge is made for hauling it out. When the waste material is delivered to other lines a charge of \$1.50 per car is made; it is hauled free only when used by the Union Railroad. No revenue accrues to the plants for the disposition of the waste. Some of the slag is sold to the Slag Products Company for which the steel company receives a royalty of 1 cent a ton, and for some slag that is sold direct to the consumer the steel company receives from 10 to 15 cents or more per ton according to the class of the material and the use to which it is

proposed to be put, the purchaser paying the freight. It is stated that some slag is shipped to distances as great as 50 miles from the plants.

In this connection it appears of record that the wall along the river bank for a distance of about 7 miles was built with hot slag from the furnaces, and the work of hauling the slag and building the wall was performed by the industrial railroad. The work covered a period of from 1897 until about 1905. Along the wall the industrial railroad has the use of the land exclusively, but there are places where the fill extends a considerable distance beyond the tracks, which is not used by the industrial railroad. There is also a river wall built in front of the American Steel & Wire Company's plant and extending along the front of the plant of the McClintock-Marshall Company; it was built with hot slag from the Carrie furnace in the same manner as the wall on the south side of the river and was also built by the industrial railroad. It is not clear whether or not the industry paid the industrial railroad for handling the slag and building the wall, but it was the recollection of the witness that it did. In any case the expense of this slag disposal was included in the cost of the road and was capitalized.

After the West Side Belt was built the Monongahela Southern was extended to a junction with that line at Mifflin. The Monongahela Southern was brought up to grade by filling in the hollows with slag and refuse from the plants of the steel company. This was the only available dumping ground that the steel company had at that time and when the fill was made for the purpose of regrading the road no charge was made against the steel company for dumping the slag and this expense was also capitalized.

In the movement of the slag from the furnaces and other refuse material it is stated on the record that in the year 1909 the industrial railroad handled 157,005 cars, of which 128,190 cars were switched for the industry between the plant and the dumping ground and 6,156 cars delivered to the connecting trunk lines, making a total of 134,346 cars from which revenue was derived and 22,659 cars used by the industrial railroad from which no revenue was derived. In 1910, 138,043 cars were handled for the industry and 9,980 cars were delivered to the trunk lines, a total of 148,023 cars from which revenue was derived and 18,764 cars from which no revenue was derived. In 1911 there were 112,503 cars handled for the industry and 5,649 cars were delivered to the trunk lines, a total of 118,152 cars from which revenue was derived and 19,846 cars from which no revenue was derived, making a total for the three years of 400,521 cars from which revenue was derived and 61,269 cars from which no revenue was derived. These figures give some impression

of the immense amount of refuse that must be disposed of by a steel plant and indicate how necessary it is as a part of the manufacturing process to have rails and locomotives and a convenient dumping ground for the purpose. Nothing could be more completely industrial than this feature of the situation, and a charge against the industry by the industrial railroad for this work is simply a part of the general plan of separating the railway from the industry. The payment by the industry to its plant railway for performing the plant switching is a mere accounting arrangement and simply results in swelling the amount available for dividends in which form it goes back into the treasury of the industry.

The Union Railroad is a member of the American Railway Association and a party to the per diem and reclaim agreement. For the year ending June 30, 1909, the amount of reclaims received was \$122,156.75 in excess of the amount of per diem paid. For the year ending June 30, 1911, the amount of the excess in reclaim over the amount of per diem paid was \$70,639.86. For the other three years during the period from August 1, 1906, when the reclaim arrangement went into effect on the Union Railroad, to June 30, 1911, the per diem paid exceeded the reclaims in the total sum of \$241,802.62, leaving the net amount paid for per diem in excess of reclaims \$49,006.01 for the entire period of five years.

The arbitrary number of days' reclaim allowed from August, 1906, to July, 1909, was five days; from September, 1909, to November, 1909, four and one-half days; from December, 1909, to December, 1910, five days; and from January, 1911, to date of hearing, four and one-half days. The time allowance applies to each loaded car, so that if a car that is loaded in is loaded out double time is allowed on that car.

During the period from October 1, 1910, to January 31, 1912, inclusive, the total amount of demurrage collected by the industrial railroad was \$30,080. Of this amount \$27,125 was collected from the constituent companies and \$2,955 from others. It was ascertained by the Commission's examiner that during the period between August, 1906, and October, 1910, the Union Railroad had no car-service rules in effect, although it was a member of the per diem agreement during that period. That being the case, the plants located on the Union Railroad were exempt from car-service charges during that period. It was explained that there was an arrangement during that time by which whatever it cost the Union Railroad for per diem was collected from the industries and, while the industrial railroad had no car-service rules, the plants of the steel company were penalized by the industrial railroad to the extent of per diem paid to the owners of the car over and above reclaims.

For the year ending June 30, 1908, the hire of equipment account shows a credit balance of \$228,771.65; in 1909 the credit balance was \$179,717.92; and in 1910, \$127,654.20.

Subsequent to the hearing in this proceeding the Union Railroad submitted to the Commission a statement for the record in which it is stated that the American Railway Association voted to increase the per diem rate on January 1, 1913, from 30 and 35 cents to 45 cents per day and to abolish the reclaim. The effect of this change on the revenues of the Union Railroad, if applied to the operation for the year ending June 30, 1911, would be that instead of having a net income of \$385,396.77 for that year the result would be a corporate loss of \$311,320.57. In making up this statement the cars of the Union Railroad in foreign service were taken into account and due allowance given for all per diem received on such cars. But this statement is predicated on the theory that the Union Railroad will remain a party to the per diem agreement and continue to pay the per diem charge for every day that the line carriers' cars are on its rails without any compensating reclaim. No such result would obtain if the Union retired from that basis of dealing with cars interchanged. The trunk lines would then deal directly with the industry on the demurrage basis and free time would be given within which to load and unload the cars.

The Union Railroad receives divisions from the Bessemer & Lake Erie Railroad on lake ore; when consigned to points on the Union Railroad 26 cents, when consigned to the Clairton plant 17 cents, and when consigned to the McKeesport Connecting Railroad 10 cents per gross ton. The Wabash allows a division of 25 cents per gross ton on lake ore and 35 cents per ton on finished products when the rate on the Wabash exceeds 75 cents per ton. All of the other trunk line connections make an allowance of 10 cents per ton on all traffic of classification grade of pig iron or lower and 15 cents per ton on higher grades. This, in effect, makes the allowance 10 cents per ton on inbound raw material and 15 cents per ton on outbound finished products.

In view of the fact that the Wabash makes an allowance of 35 cents per ton on the finished product it was suggested that this line would naturally secure the bulk of the outbound tonnage, but it was stated by the witness that the proportion of the outbound tonnage given to the Wabash was comparatively small. The Pennsylvania, the Baltimore & Ohio, and the Pittsburgh & Lake Erie each receive a much larger percentage. In this connection it was stated that some time in 1900 or 1901 a contract was entered into between the Carnegie Steel Company and what was called the Pittsburgh & Toledo Syndicate under the terms of which the syndicate was to extend the line of the Wheeling & Lake Erie to a connection with an extension

of the Union Railroad. This plan was subsequently carried out by the extension of the West Side Belt to a connection with the Monongahela Southern division of the Union Railroad at Mifflin Junction, and through the West Side Belt the Wabash has since interchanged traffic with the Union Railroad. This contract provided for the giving to this line, when so extended, one-fourth of the traffic destined to points within the central freight association territory, but when the time came for getting into actual operation under this contract, which was not until about 1906, no attention was paid to it for the main reason that the Wabash never has had equipment to take its share of the business even on equal terms.

At the time of the hearing the Union Railroad had filed with the Commission local proportional tariffs naming commodity rates between points on the Union Railroad and Mifflin Junction, the point of connection with the West Side Belt, and on coal, coke, ore, and other material interchanged with the Wabash-Pittsburgh Terminal (West Side Belt). Since the date of the hearing tariffs have been filed naming rates substantially the same or in some cases slight reductions from the rates in effect at the time of the hearing. It has also filed such tariffs for all local movements of cars on the line of the industrial railroad, including the movement of all classes of material between the different departments of the plant.

The annual report for the year ending June 30, 1911, shows a total operating revenue of \$3,640,476.09, of which \$3,621,930.74 was switching revenue, \$8,920.10 other transportation revenue, and \$9,625.25 was other than transportation revenue. The total operating expenses for the year ending June 30, 1911, were \$2,802,746.18, leaving a net operating revenue of \$837,729.91. The income from other sources amounted to \$418,579.55, making a total income from all sources of \$1,256,309.46. The deductions from the income were taxes, \$59,500.69; rent of tracks and other property, \$153,723; interest on funded debt, \$212,500; other interest, \$299,959.52; for permanent improvements on leased tracks of the Bessemer & Lake Erie Railroad, \$145,000; total, \$870,683.21; leaving a surplus for the year of \$385,626.25. There was an accumulated surplus from previous years of \$2,401,759.26, which, after the deduction of \$13,304.92 for miscellaneous adjustments, left a net surplus on June 30, 1911, of \$2,774,080.59.

In an exhibit filed of record it is shown that the aggregate amount of the dividends paid by the Union Railroad is \$1,760,000, which is about 88 per cent of the capital stock of \$2,000,000, or about 5½ per cent per year. The first dividend of \$240,000 was paid in 1898, the second of \$120,000 in 1899, the third in 1904 of \$1,200,000, and the last dividend paid was \$200,000 in 1906. Another statement filed with the record shows that from the beginning of operations up to June 30,

1911, the Union Railroad had an aggregate operating revenue of \$34,646,341.50. During the same period the total operating expenses, additions and betterments, rentals, interest, and dividends amounted to \$31,872,260.91, leaving a surplus or profit, June 30, 1911, of \$2,774,080.59. These figures emphasize the fact that the Union Railroad is very profitable, considered as a mere investment, and immensely profitable to the controlling interest, in that besides returning a net income, the controlling interest is relieved through that means of an enormous item in its manufacturing cost, the burden being assumed by the trunk lines out of their rates, and thus thrown upon the general public.

The Union Railroad does not itself conduct a passenger business. The regular passenger business is conducted by the Bessemer & Lake Erie over the tracks leased to the Union Railroad between North Bessemer and East Pittsburgh. It is stated that the revenue derived from this service is divided between the two companies, the Union Railroad receiving $7\frac{1}{2}$ cents for each adult and 4 cents for each half fare.

Under a contract or agreement with the Universal Portland Cement Company the Union Railroad operates a special passenger-train service between East Pittsburgh and Universal for the purpose of carrying the employees of the cement company between East Pittsburgh and the plant. For this the Union Railroad receives from the cement company about 68 cents per train-mile, on the basis of 50 cents per train-mile and the wages of the crews. No tickets are sold. The service is maintained by the Universal Portland Cement Company to convey its employees back and forth, and the 68 cents per train-mile is paid by that company. The employees pay nothing. These trains handle about 150 employees daily.

M'KEESPORT CONNECTING RAILROAD.

The National Tube Company, a subsidiary of the United States Steel Corporation, which is referred to elsewhere in connection with the Benwood & Wheeling Connecting Railroad and the Lake Terminal Railroad, also operates a large plant at McKeesport, Pa., consisting of blast furnaces, steel works, tube works, skelp mills, the various buildings and departments covering an area of 81 acres. The tube company employs at this plant between 5,600 and 5,800 men. There is an inclosed area of practically 100 acres lying between Riverton and Walnut streets and between the Pennsylvania Railroad and the harbor line, and within this fenced inclosure is the plant of the tube company and the tracks of the McKeesport Connecting Railroad.

In 1889 the McKeesport Connecting Railroad was incorporated by the predecessors of the National Tube Company and in 1891 took over
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the tracks in and around the plant, but the tracks were operated by the industry until 1903, when the works were entirely reconstructed. Since that time the tracks have been operated by the industrial railroad company.

The terms upon which the tracks were transferred to the incorporated railroad are not stated of record, but its entire capital stock, \$1,000,000, is held by the tube company. It operates 19.30 miles of tracks, of which 11.87 miles are owned and 7.43 miles are leased from the tube company at the nominal rental of \$1 per annum. In addition to the service performed by the industrial railroad the tube company operates a narrow-gauge road as a facility for its industrial operation and also moves the hot metal with a locomotive leased from the industrial railroad. The equipment of the industrial railroad consists of 15 locomotives, 68 gondolas, 10 wooden flat cars, 107 steel flat cars, and 1 test car. All the right of way under the tracks owned by the industrial railroad was purchased from the tube company on the basis of \$26,500 per acre. The total value of the industrial railroad on June 30, 1911, estimated by engineers employed for the purpose was stated to be \$818,961, the right of way being put at \$20,000 per acre. The annual report for the year ending June 30, 1911, shows the total investment in the property to be \$965,794.68.

The tracks of the terminal railroad connect with the Pennsylvania, the Baltimore & Ohio, and the Pittsburgh & Lake Erie. The Pennsylvania Railroad tracks formerly extended through the plant and along the river bank, but by arrangement with the United States Government the National Tube Company was given permission to fill in so as to put the river bank in good alignment and it constructed a wall of molten slag along the entire length of the property. The tube company exchanged for that portion of the property that was owned by the Pennsylvania Railroad other property lying on the south side of the plant away from the river. In the transfer of the properties between the two companies the tube company received title to the storage yard lying along the river and the Pennsylvania received the property on which its present yards are located. The Baltimore & Ohio formerly had connection with the plant by means of a depressed track, but the tube company raised its yard level at that point and in exchange for the property within the plant occupied by the Baltimore & Ohio track the tube company arranged to put in a connection at another point. This connection was later removed by the Baltimore & Ohio and it now makes deliveries at the general receiving tracks of the industrial railroad. The Baltimore & Ohio formerly had a track connection also with the DeWees Wood plant, now a part of the American Sheet & Tin Plate Company, but in the general rearrangement of the tracks as herein described the two

trunk lines are excluded from access to this plant except over the rails of the McKeesport Connecting. The result of the exclusion of the trunk lines is to give the industrial railroad a broader basis for allowances.

The only industries served by the industrial railroad other than the National Tube Company are the American Sheet & Tin Plate Company, also a subsidiary company of the United States Steel Corporation, and the Keytsone Sand Supply Company. The sand for this company is brought to the dock by vessels, from which it is taken by means of a hoist. The dock upon which the hoist is located is on the land of the industrial railroad, and as a large quantity of sand is used at steel plants it may be said that the sand company is a contributory facility of the industry. It was stated by the witness that the sand company is only a tenant at will and would have to remove its plant upon thirty days' notice from the lessor.

The general character of service performed by the terminal railroad is the switching of cars between the interchange tracks of the trunk line and the points of loading or unloading within the plant inclosure. During the year ending June 30, 1911, 121,867 cars were handled for the tube company and 6,700 cars for the two other industries, if the sheet and tin works be regarded as an outside interest. Of the service performed for the tube company 47 per cent was plant switching and 53 per cent interchange switching with the trunk lines. The 6,700 cars handled for the other two industries were all interchanged with the connecting trunk lines, 5,148 cars being handled for the American Sheet & Tin Plate Company and 1,552 cars for the sand company.

The tube company has a storage capacity for only a small percentage of the ore received from the trunk lines, and it is necessary to spot the cars at the consuming bins. Coke is received in train lots, and the trunk line places a train of coke at the interchange point, and the terminal railroad switches out the particular grade of coke wanted, placing the cars at the different points of consumption. On the shipments of manufactured products the industrial railroad spots the cars at the various points of loading and switches the loaded cars to the track scale and from there to the various trunk line connections. It was stated by the principal witness that it would be impossible for the three trunk lines to perform the switching at this plant on account of getting into each other's way; and even if the trunk lines pooled the service and designated one of their number to perform the switching, a thorough knowledge of the requirements of the plant service would be necessary for efficient results. All the coal for the industry comes in by boat and is received at the dock of the industrial railroad, where the tube company has a hoist which elevates the

coal and drops it into a crusher. From there it is apparently handled by the industry to the consuming point over its narrow-gauge plant tracks.

Inbound cars of coke and limestone were formerly spotted by the Pennsylvania Railroad. This practice was discontinued about two and one-half years ago and an agreement made whereby the switch track on which the Pennsylvania Railroad formerly brought in and spotted the cars was to be kept open, but the delivery was thereafter to be made in the Pennsylvania Railroad yard.

The industrial railroad receives allowances from the trunk lines of \$2.25 per car on inbound ore, \$1.75 per car on coke, and \$1.60 per car on limestone. On all other switching a charge of \$1.50 per car is made against the tube company, except that on outbound tubes delivered to the trunk lines a charge of \$2.50 per car is made. The trunk lines do not absorb any charges on outbound traffic. On traffic handled for the American Sheet & Tin Plate Company the trunk lines make an allowance of 75 cents per car, in and out, loaded or empty. This allowance is presumably made because the American Sheet & Tin Plate Company has a short plant-facility track which it calls the McKeesport Terminal Railroad, and the service performed by the McKeesport Connecting is treated by the trunk lines as an intermediate service. For the interline switching between the three trunk lines the industrial railroad, makes a charge of \$2.50 per car. The industrial railroad formerly received allowances of 10 and 15 cents per ton on traffic interchanged with the trunk lines, but these allowances were discontinued about 1901, and it has received no allowances since that time, except on inbound material. It does not issue bills of lading or waybills, all cars being handled by car cards or train slips.

The McKeesport Connecting Railroad has been a member of the per diem agreement since August, 1906. The hire of equipment account in the annual report for the year ending June 30, 1911, which includes the reclaims, shows a credit of \$14,971 for the excess over the total amount of per diem paid for the use of trunk line equipment. During the same period it collected from the tube company \$1,017 and from the Keystone Sand & Supply Company \$2 for demurrage. As stated elsewhere in this report, the amount received by industrial railroads from the trunk lines in the form of reclaims is of direct benefit to the controlling industry. This benefit is derived not only through the increased time allowance for loading or unloading cars, but also by the reduction of the expense of operating the industrial railroad in the cancellation by this means of the per diem that accrues on the cars delivered by the trunk lines for the use of the industry. In addition to the practical elimination of demurrage charges against

the tube company it is to be noted here, as in all other cases, that the income of the industrial line from that source gets immediately back into the industrial pocket through the ownership of the industrial line by the industry. In other words, demurrage no longer accrues as a burden against industries that have industrial lines.

The excess of operation expenses and taxes over the operating revenue and other income for the year ending June 30, 1911, amounted to \$341.98; there was an accumulated surplus from previous years of \$250,780.55; after the payment of a 10 per cent dividend amounting to \$100,000 and miscellaneous adjustments to the amount of \$163.53 there was a net surplus on June 30, 1911, of \$151,275.04.

ST. CLAIR TERMINAL.

This road was incorporated June 24, 1901, with a capital stock of \$1,000,000 and at the time of the hearing had a funded debt of \$750,000. It was originally constructed by the Crucible Steel Company and operated by that company until 1904, when the plant of the steel company at Clairton, Pa., and the railroad were taken over by the Clairton Steel Company, a subsidiary of the United States Steel Corporation. The plant of the Clairton Steel Company was leased to and is now operated by the Carnegie Steel Company, also a subsidiary of the United States Steel Corporation. At the time of the hearing the industrial railroad owned 8.40 miles of track and leased from the Carnegie Steel Company 15.43 miles of yard tracks and sidings located in and around the plant, making a total operated trackage of 23.83 miles. The equipment consists of 8 locomotives and 123 freight cars. It is stated that 85 of these freight cars are in the coke trade, and go regularly over the Pennsylvania to the coke region, averaging a trip about every five days and earning mileage at the rate of six-tenths of a cent per mile.

Approximately 32 acres of its right of way was purchased from the Clairton Steel Company at \$25,000 per acre; it is indicated that some of the right of way is leased, but the exact proportion owned and leased is not given of record. The industrial railroad owns a bridge over the Monongahela River, the total cost of which is put at \$636,332. The bridge is of heavy construction, with a channel span of 500 feet and five or six girder spans of about 100 feet each. It is a double-track bridge and is sufficiently strong to carry any kind of equipment; it is also designed for a street railway above the steam railroad tracks.

The trunk line connections are the Pennsylvania, the Pittsburgh & Lake Erie and the West Side Belt. The connection with the Pittsburgh & Lake Erie is made by means of the bridge over the Monongahela River. The Pennsylvania tracks originally extended through the property now occupied by the plant, but were relocated at the

expense of the steel company, the latter acquiring the right of way for the use of the plant. This change took place at the time the plant was built. The Pennsylvania tracks have never been operated into the plant, nor has it owned spurs into the plant. The spur tracks were laid at the expense of the steel company and operated with their own power. The main line of the Pennsylvania still remains inside the property line of the steel company.

The connection with the West Side Belt was made under a contract that provided for the extension of the industrial railroad track from the terminus of the West Side Belt on the west side of the Pennsylvania right of way to a point at the bridge approach and that the expense for this track was to be borne by the St. Clair Terminal Railway, the West Side Belt to pay interest on the actual cost on the basis of 5 per cent per annum. It is indicated on the record that the cost of this extension for a connection with the West Side Belt was approximately \$160,000 and that the annual payment by the West Side Belt to the St. Clair Terminal amounts to approximately \$8,000. This extension involved the construction of a double-track steel viaduct bridge 348 feet long over the tracks of the Pennsylvania Railroad and the donation by the St. Clair Terminal of certain rights of way for an extension of the West Side Belt. The contract between the two companies provides that trackage rights shall be granted to the West Side Belt over this extension for a period of 999 years, the West Side Belt to pay the taxes and the entire cost of maintenance.

The annual report for the year ending June 30, 1911, shows the total investment in the railroad property to be \$2,174,670.07. The value is stated by engineers employed for that purpose to be \$2,311,802.75 as of June 30, 1911. This valuation is on the basis of the auditor's statement of the cost of the property less depreciation and was considered fair with the exception of land valuation, which was considered high. The land, in the auditor's statement, was put at \$25,000 an acre, while in the judgment of the engineers \$10,000 per acre was a fair price; this would reduce the cost as shown by the auditor's statement from approximately \$2,311,000 to \$1,800,000.

In addition to the tracks of the industrial railroad the steel company owns a system of narrow-gauge tracks within its plant aggregating 7 or 8 miles, which it operates with 6 narrow-gauge engines for interplant switching, although certain interplant movements are made also by the industrial railroad for which it charges the steel company 70 cents per car, except on hot metal, for which the charge is \$1 per car.

The general character of the service performed by the industrial railroad consists of switching empty and loaded cars between the various departments of the plant and the trunk line connections. The

industrial road, as before stated, also performs a part of the plant switching for the steel company. The tracks at the interchange points with the Pennsylvania are owned partly by the Pennsylvania and partly by the industrial railroad. It is stated that the Pennsylvania does not maintain sufficient track facilities to take care of the out-bound traffic. The switching of cars of ore, limestone, and coal from the points of interchange to the points of placement within the plant requires movements every few hours and this must be done with the utmost promptness to meet the requirements of the plant. The situation at this plant does not differ from that at any other plant in respect to the required promptness in the delivery of supplies to the blast furnaces.

Practically all the ore used at this plant comes from the Conneaut dock via the Bessemer & Lake Erie, Union Railroad, and West Side Belt. The 96-cent rate from Conneaut Harbor to Clairton is divided 16.8 cents to the St. Clair Terminal, 15 cents to the West Side Belt, 17 cents to the Union Railroad, 2 cents to the Dock, and the balance to the Bessemer & Lake Erie. The industrial railroad receives allowances from the Pennsylvania and the Pittsburgh & Lake Erie of \$2.25 per car on ore, \$1.75 per car on coke, and \$1.60 per car on limestone, but the West Side Belt makes an allowance of 10 cents per net ton on other traffic—both inbound and outbound with a minimum of 25 tons per car.

During the past year no service has been performed for others than the controlling interest.

During the fiscal year ending June 30, 1911, the Pittsburgh & Lake Erie paid the St. Clair Terminal in addition to the allowance on ore, coke, and limestone \$8,157 which was the estimated cost of operating one engine, the theory being that it would place this carrier on a parity with the other trunk lines in delivering traffic on the side of the river where the plant is located. On some days it required two or three crews to do the work, while on other days the whole time of a single crew was not required; but it is estimated that the time of one crew is a fair average of what it would cost if deliveries had been made on the plant side of the river and the sum allowed was for the extra haul or extra operating expense. It is stated of record that this extra payment has been made to the industrial railroad since it began operation. This extra allowance is, in fact, a payment by the Pittsburgh & Lake Erie of a bonus for the traffic hauled to its connection on the opposite side of the river, in preference to giving it to the near-by trunk lines on the same side of the river as the plant and is in effect a rebate out of the rate.

The main line of the Pennsylvania extends through the west side of the plant. The Pittsburgh & Lake Erie connection is on the
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opposite side of the river three-fourths of a mile from the south property line of the plant. The connection with the West Side Belt is three-fourths of a mile from the north property line of the plant.

The industrial railroad does not issue bills of lading. Outbound cars are moved on switching tickets and the bills of lading are issued by the trunk lines. The cars are interchanged under the demurrage rule.

Under some form of an agreement the steel company guarantees to the industrial railroad freight earnings to the amount of \$130,000 per year and 5 per cent on the outstanding bonds. In the nine years operation it has accumulated a deficit of practically \$138,000, which has been advanced by the steel company and carried as a current debt. The annual report for the year ending June 30, 1911, shows a total operating revenue of \$186,485.24, operating expenses \$123,224.01, net operating revenue \$61,261.23. After deducting taxes \$2,415 there was a net operating income for the year of \$58,846.23. There was other income to the amount of \$10,200.27, and after the payment of rents, interest, and a sinking fund amounting in all to \$92,564.14, the expenditures exceeded the income to the amount of \$23,517.64. There was an accumulated deficit from previous years of \$186,919.32, making an apparent loss from operation up to June 30, 1911, of \$210,436.97.

BALTIMORE & SPARROWS POINT RAILROAD.

In many of its features this industrial line is unique, although when fully understood it does not differ materially from other industrial lines described in these pages; its operations and affiliations are simply a variation in form without any difference in results. While not owned by the Maryland Steel Company, there is an almost complete identity in the ownership of the two properties. As the case involves some complications, we shall first briefly describe the plant of the steel company. The real estate consists of about 1,000 acres of land on what is known as Sparrows Point, on the north shore of the Patapsco River, in the state of Maryland. This point, as will be seen from the accompanying plat, is almost entirely surrounded by water. With the exception of the 5 acres where the government lighthouse stands the entire peninsula belongs to the Maryland Steel Company. The plant consists of blast furnaces, bessemer and open-hearth furnaces, a rail mill, shipbuilding plant, machine shop, and foundries. When the plant first began operation both its inbound material and outbound manufactured products moved by water. It may fairly be inferred that its location on Sparrows Point was largely, if not altogether, influenced by the desire to have the full benefit of

water transportation. As a matter of fact, a large part of its output is shipped by water to the southwestern states. It is in very active competition in that part of the country. The record shows that all its output of rails moves to the south and southwest. It also makes large shipments to foreign countries. The shipbuilding plant, as a part of the company's business, is of some importance and more than half of the employees of the entire plant are engaged in that work. Another factor that undoubtedly contributed to the location of the plant at Sparrows Point is its ready accessibility to the iron ores of Cuba, which are used in this plant to the practical exclusion of all other ores. The iron mines of Cuba, from which the ore comes, belong to the Spanish-American Iron Company.

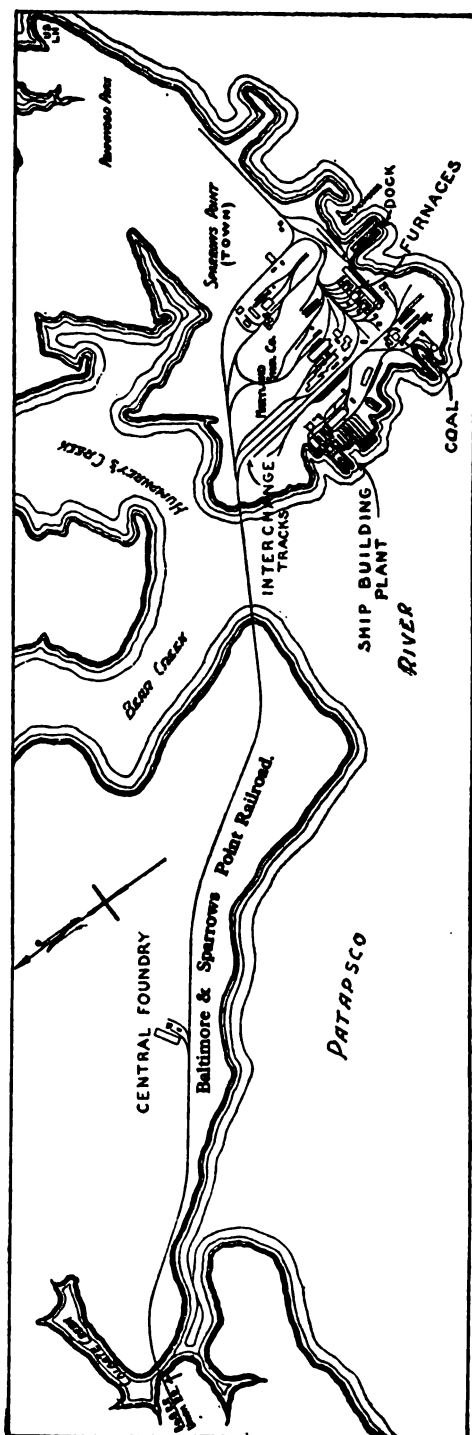
It may be well at this point to explain the industrial connections of the Maryland Steel Company. The Pennsylvania Steel Company of New Jersey is what is commonly known as a holding company. It owns the Pennsylvania Steel Company of Pennsylvania; it also owns the Maryland Steel Company, the plant of which we have just described. It owns the controlling interest in the Spanish-American Iron Company, which, as above stated, supplies the Maryland Steel Company with ores. Finally, it owns the Baltimore & Sparrows Point Railroad, which serves the last-named steel plant. The stock of the Pennsylvania Steel Company of New Jersey is in turn owned by others. The Pennsylvania Railroad interests own 68.74 per cent of it and the Reading Railroad interests 29.45 per cent; 1.81 per cent is held by outsiders. We are concerned here especially with the Maryland Steel Company, Pennsylvania Steel Company, the Spanish-American Iron Company, and the Baltimore & Sparrows Point Railroad Company. The identity in ownership of all these companies is complete. The corporate officers of all of them were also practically identical at the time of the hearing.

There are some other features in connection with this plant that must not be overlooked. The steel company not only owns all this real estate, but its defined policy is to retain the ownership of it. The town of Sparrows Point, which has a population of 6,500 people, is not an incorporated town and has no organized government. It is entirely under the control and direction of the Maryland Steel Company; practically all the inhabitants are employed by that company or by its industrial line or other industries belonging to it. The most substantial mercantile establishment in the town is the company store. Most of the buildings of the town are owned by the steel company. The public school stands on land owned by the county commissioners, but it was dedicated to them by the steel company for school purposes. One of the town doctors owns the land on which his house is built. This is true, also, of the churches.

With these exceptions, the fee of the real estate on which the town is built is in the steel company. A few buildings are owned by their occupants, but the land on which they stand is leased from the steel company. In all the leases there is a provision under which the company may resume possession of the land when needed for manufacturing purposes; but in such cases it must pay the cost of removing the buildings to other sites or of erecting new buildings on the new sites. The electric light company is owned by the steel company. This is also true of the water company. The street lighting is free, but a charge is made, at rates fixed by the company, for light used for domestic purposes. The town policeman is on the pay rolls of the steel company. It also looks after the sewage and collects the garbage.

The company store is an incorporated concern with a capital of \$50,000, of which 72 per cent is owned by the steel company. It conducts a general merchandise and department store business, selling miscellaneous articles for household consumption, such as dry goods, groceries, vegetables, meats, etc. It also conducts a chandler business both at Sparrows Point and Baltimore. On the outskirts of the company town it has a truck farm and also a dairy farm, from which it supplies milk to the town. It deals also in coal, ice, and wood, and conducts a bakery. It has a slaughterhouse and undertakes generally to furnish the necessities of life to the company employees and their families.

The Baltimore & Sparrows Point Railroad owns 2 locomotives but no other equipment. It is 5.4 miles long and extends from a connection with the Pennsylvania and Baltimore & Ohio at Colgate Creek to Penwood Park, about one mile beyond the company town. This park is company property; it has been much used as a place for Sunday school picnics and gatherings of that nature. It is said that before the industrial line was built its trunk line connections had been asked to extend their lines to the plant of the steel company, but they declined to go east of Colgate Creek. There is no written proof of this of record, but the statement stands uncontradicted. The line was built for the purpose of providing facilities by which the Maryland Steel Company could receive its inbound raw material and deliver its output by rail to the trunk line carriers. The interchange tracks within the plant are shown on the plat; and the inbound tonnage is received by the steel company on the same tracks on which the steel company delivers its outbound tonnage to the industrial line. The steel company has a system of tracks within the plant which it operates with its own power; it does all the spotting in and about the plant. The industrial line does none of this work.



As is indicated on the plat, the Maryland Steel Company owns extensive docks on the Patapsco River which it built for its own use. It is admitted to be a private dock and to be under the company's absolute control. The Baltimore & Sparrows Point Railroad does not even have access to it. As heretofore stated, a large part of the steel company's output goes over its dock and is moved by water. Much coal and practically all the ores are received by it at the dock. It will be observed that although the tracks of the incorporated line approach the dock within a hundred yards the ownership of the tracks on the dock has been retained by the steel company. It is claimed of record that Sparrows Point has some advantages over other ports in the Baltimore territory on account of its better facilities for handling cargoes. We know also that large quantities of Cuban ore are used by the steel mills of this country. Rates on inbound ore from the Atlantic ports to the Pittsburgh districts have been lately the subject of inquiry before us. But the only ore that passes through the port of Sparrows Point is the ore used by the Maryland Steel Company or by the Pennsylvania Steel Company at Steelton, which is owned by the same interests. By preserving these docks as private docks and reserving the ownership of the tracks upon them as private tracks the steel company protects its own industrial road, the Baltimore & Sparrows Point Railroad Company, from the embarrassment of being called upon, as a common carrier serving the public, to carry ores for mills that compete with the Maryland Steel Company. In this respect the relations between this industrial line and the industry in the interest of which it is owned and operated are characteristic.

One word further is necessary to complete the statement of the manner in which the Baltimore & Sparrows Point serves the industry. The industrial line delivers the inbound traffic at the interchange tracks within the plant; from that point the steel company does the spotting for itself with its own power. It also delivers the outbound traffic to its industrial line on the interchange tracks. The outbound traffic that goes over the dock is received by the steel company from its industrial line at a point near the dock, and handled by it to ship side; the inbound traffic going over the dock is moved by the steel company to the industrial line at the same point. For this service the steel company makes a charge against the industrial line.

The only independent industries on the Baltimore & Sparrows Point line are the Central Foundry Company, which manufactures cast-iron pipe, and the brick yard of Burns & Russell; both of these concerns are at Dundalk. At a place called Turners the United States Government had a quarantine station in course of construction at the time of the hearing. Out of the total traffic of the indus-

trial line, 5.51 per cent is for outside interests; the balance, or 94.49 per cent, is handled for or in behalf of the industrial interests controlling the whole investment. On the small amount of package freight between Baltimore city and Sparrows Point the Pennsylvania Railroad allows the industrial line one-third of the net revenue; the Baltimore & Ohio allows 10 cents per net ton. On all other traffic each trunk line allows the Baltimore & Sparrows Point Railroad 10 cents per net ton. The bills of lading are issued by the trunk lines, and not by the industrial line.

The Baltimore & Sparrows Point Railroad Company is a member of the per diem agreement and receives reclaims from the Baltimore & Ohio and the Pennsylvania railroads. It formerly received four days reclaim, but the time was cut down to three and one-half days about three years ago. The principal reason assigned by the trunk lines for reducing the reclaim time was that the traffic could be handled in three and one-half days. Cars are interchanged between the industrial railroad and the steel company on a demurrage basis. The witness admitted that the demurrage collected from the industry equalled the loss upon the reclaims. The hire of equipment, which includes the reclaims of the Baltimore & Sparrows Point Railroad Company, shows a slight profit for the year ending June 30, 1911; the profits have been larger in previous years. In 1907 the per diem paid exceeded the reclaim allowances by \$10,170, but in the succeeding five years the reclaims exceeded the per diem paid by \$20,000. The reason for this excess in per diem paid in 1907 was the extraordinary heavy business which resulted from the congestion of cars.

The Baltimore & Sparrows Point Railroad has no passenger traffic, but a passenger-train service is conducted by the Northern Central (Pennsylvania Railroad) between Baltimore city and Sparrows Point over the tracks of the industrial line between Colgate Creek and Sparrows Point; it operates from 7 to 10 trains daily on regular schedule. For the use of its tracks the Baltimore & Sparrows Point Railroad receives 20 per cent of the rate between Baltimore city and Sparrows Point and one-third of the revenue on business purely local to the Baltimore & Sparrows Point Railroad. During the fiscal year ending June 30, 1912, 600,248 passengers were carried. About 80 per cent of the passengers carried during the summer and 85 per cent during the winter are employees of the Maryland Steel Company. There are Sunday excursion trains from Baltimore which carry from 500 to 1,000 people. These excursion trains are run the year round. There is also a trolley line service between Baltimore city and Sparrows Point, and after this trolley service was inaugurated in 1904 there was a material falling off in the passenger traffic on the Baltimore & Sparrows Point Railroad. This trolley line is con-

ducted by the Baltimore, Sparrows Point & Chesapeake Railway Company, a Maryland corporation in which neither the Maryland Steel Company, the Pennsylvania Steel Company of New Jersey, nor the Baltimore & Sparrows Point Railroad Company has any interest, either in whole or in part. This trolley line is operated through the town of Sparrows Point under an arrangement with the Maryland Steel Company by which the line was built within its property limits at its own cost and then leased to the trolley company for a term of 50 years from February 1, 1903, upon a rental basis of 5 per cent per annum on the cost. The right was reserved in the lease to locate the road elsewhere in the event the steel company should need the land occupied by its present tracks for its own manufacturing purposes.

The revenues accruing from the allowances made by the connecting carriers are extraordinary when the amount of the investment in the industrial line is considered. In 1902 the short line declared two dividends, one of \$50,000 and one of \$52,500. In 1903 a dividend of \$90,000 was declared. Since that time and up to January, 1912, dividends amounting to \$445,000 have been paid. The total dividends from 1902 to June 30, 1912, have aggregated \$635,500, or more than 423 per cent on the investment. The dividend rate ranges from 20 to 55 per cent a year. The total cost of the road on December 31, 1911, was \$307,024; all but \$150,000 of this amount has come from earnings in addition to the dividends. At the close of the fiscal year ending June 30, 1912, this industrial railroad showed on its accounts a surplus of \$51,259.93.

LAKE ERIE TERMINAL RAILROAD.

In this case, as the history of the investment was explained of record, we have a somewhat different condition from that which is usual in connection with the incorporation of industrial railroads, in that the industrial line was first projected entirely as a railroad investment wholly disconnected with any industrial interests.

The Lake Erie Terminal Railroad Company was incorporated in 1903 with a capital stock of \$10,000 for the purpose of building a line from Cleveland to Akron, Ohio, a distance of about 35 miles. A portion of the right of way was graded and some of the rails laid, but after building as far as a point known as Pullman road, near Cleveland, Ohio, a distance of between 3 and 4 miles, the promoter discovered clay deposits and decided to build a plant for the manufacture of hollow tile and fireproofing. He subsequently organized the Camp Conduit Company, and this company acquired the plant and the railroad tracks which connect the plant with the Cleveland Short Line, the tracks of which were 2½ miles distant from the plant.

It is stated of record that the cost of constructing the existing tracks approximated \$150,000. It is operated by the Camp Conduit Company as a bureau or department of the industry and the equipment used in the operation is owned by the conduit company.

The traffic consists entirely of inbound coal for the plant and the outbound manufactured products of the plant. This amounts to about 20 cars of coal and 60 cars of manufactured products per month. No allowance is received from the trunk lines for the switching service between the plant and the interchange point. It is stated that in December, 1910, a request was made to the Cleveland-Lorain Freight Committee for an allowance of \$2 per car for the switching performed over the tracks of the industrial railroad, but this application was denied. It is stated that the operations of the Lake Erie Terminal Railroad are not included in the operations of the Camp Conduit Company, separate books being kept for the two concerns.

SOUTH BUFFALO RAILWAY.

The conditions disclosed in this case differ in no important particulars from those described in connection with other industrial railroads. The plant was built in an isolated locality, where it was without railroad facilities for bringing in its raw material and forwarding its manufactured products. Therefore the building of a railroad to connect the plant with the more or less distant trunk lines was a necessary factor in the general investment. The plant was located at a point distant from the rails of the established trunk lines for the twofold purpose of obtaining cheap lands and of having an opportunity through an industrial railway of its own to participate profitably in hauling its own traffic. The steel company was probably influenced also by the fact that at the new location all its ore could be brought directly to the plant by water.

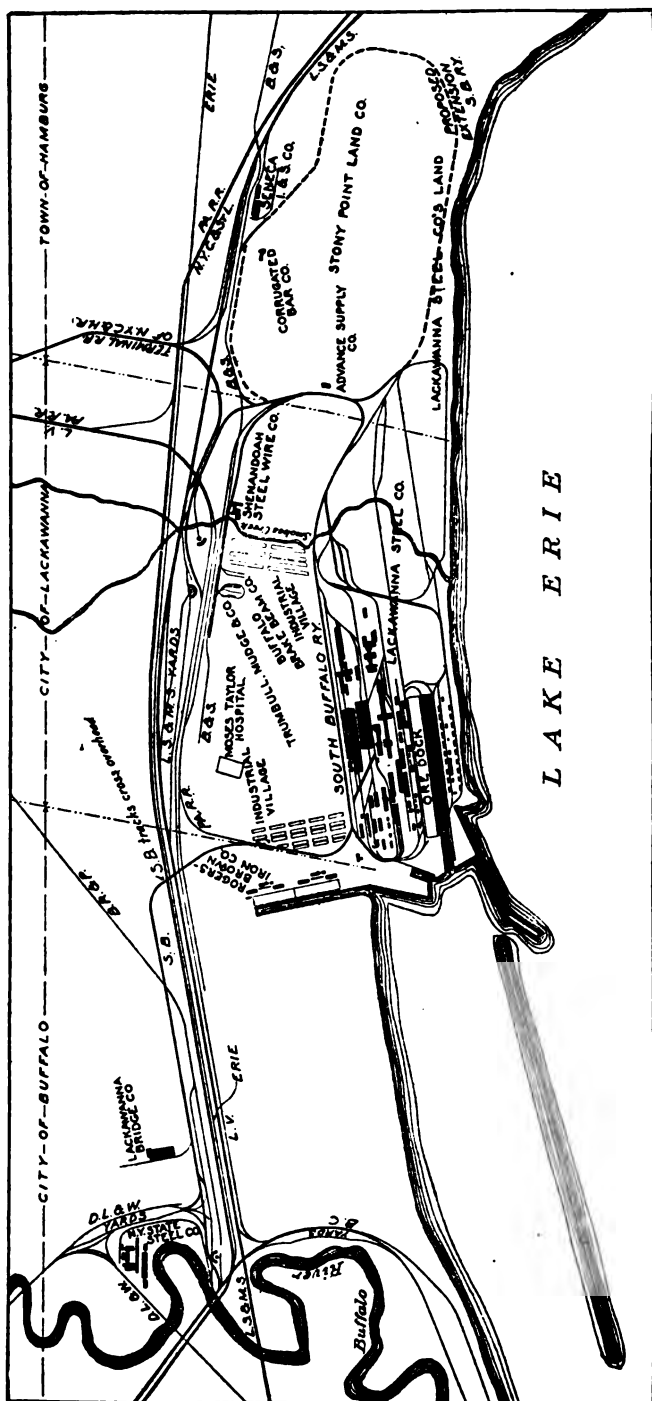
The Lackawanna Iron & Steel Company, the plant of which was originally located at Scranton, Pa., decided in 1899 to reorganize in the name of the Lackawanna Steel Company and to remove the plant to a new location at Stony Point, which adjoins the corporation line of Buffalo, in the State of New York. As a part of the project of removing the steel company from Pennsylvania to New York the Stony Point Land Company was organized and received in 1899 from the State Land Board a grant of 50 acres of land under water at Stony Point, for the purpose of constructing docks and approaches, and a grant of about 310.70 acres for the purpose of filling in lands and to construct substantial buildings and structures. Of this total grant of 361 acres the land company deeded 345.52 acres to the Lackawanna Steel Company, 1.38 acres to the United States Govern-

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Creek; Delaware, Lackawanna & Western; and Buffalo, Rochester & Pittsburgh in 1902. Later connections were effected with the Lehigh Valley in 1904, Buffalo & Susquehanna in 1906, Pennsylvania Railroad in 1907, and with the Erie in 1908. Traffic is also interchanged with the Wabash and other lines over the Buffalo Creek Railroad.

The main line of the industrial railroad extends from a connection with the Lehigh Valley, about 3,000 feet east of the center of the plant property, south and west to a point where it enters the plant property at the southeast corner. Between these two points track connections are made with the Lake Shore, New York Central, Pennsylvania, and the Buffalo & Susquehanna. The line then extends entirely through the east side of the plant property to the north end of the plant, a distance of 1.86 miles, thence easterly, parallel to the property line of the Rogers-Brown Iron Company, for 2,500 feet, where it crosses the corporation line between Buffalo and Lackawanna, and after crossing the Erie, Lake Shore, Lehigh Valley, and Pennsylvania by an overhead viaduct, it extends north to the Buffalo River, near which it connects with the Buffalo Creek; Delaware, Lackawanna & Western; Buffalo, Rochester & Pittsburgh; and Erie railroads. The track designated as main line extends outside of the plant property at the south end 1.32 miles, inside of the plant property 1.86 miles, outside of the plant property at the north end 2.73 miles; total, 5.91 miles. The industrial railroad also owns 2.23 miles of branches and 7.81 miles of spurs and sidings, in addition to which it leases from the steel company 47.32 miles of standard gauge yard tracks and sidings located in and around the plant. It also has trackage rights over the Delaware, Lackawanna & Western from the point where it connects with that line to the D., L. & W. passenger station, a distance of 3 miles, making a total trackage owned of 15.95 miles, leased 47.32 miles, trackage rights 3 miles, a total operated trackage of 66.27 miles. The rent paid for the tracks leased from the Lackawanna Steel Company is 5 per cent per annum on a valuation of \$6,200 per mile, the industrial railroad to maintain the tracks. In addition to the 47.32 miles of trackage leased to the industrial railroad the Lackawanna Steel Company has 18 miles of standard gauge tracks and 11 miles of narrow-gauge tracks connecting with the various mills of the industry, which it operates with its own equipment.

The equipment of the industrial railroad consists of 23 locomotives, 30 steel flat cars, 30 steel gondola cars, 2 passenger cars, and 2 work cars. In addition to the locomotives owned, it leases 9 locomotives from the steel company for a rental of 5 per cent on the valuation, the industrial railroad to make all repairs. None of the equipment goes off the line. All the tracks owned by the industrial railroad are located on its own right of way; a part of this right of way is inclosed



by the fence of the steel company, but was purchased before the steel plant was built. The industrial railroad also owns a tract of about 16 acres at the south end of the line, upon which are located its roundhouse, a repair shop, and various yard tracks. The road is constructed with 80 and 90 pound rail and oak ties and is ballasted with stone and cinders. The maximum grade is 1.75 per cent, and the average curvature is about 8 degrees. There are four steel bridges on concrete abutments. There is one grade crossing at Tift street, Buffalo, but under a plan of the city for separating the grade crossings at this point, an overhead bridge will be built at a cost of about \$600,000, of which the industrial railroad's proportion is estimated at from \$75,000 to \$100,000. The land through which the industrial railroad passes is partly low, swampy, marsh land, which can only be made available by filling with waste material from the industry. This land besides being cheap is the kind of land that large steel plants require for the disposition of slag and other waste products.

The total investment in the railroad and equipment, as shown by the annual report for the year ending June 30, 1911, is \$1,277,030.89, less reserve for accrued depreciation \$181,545.34; the net amount of the investment value is stated at \$1,095,485.55. The principal witness testified that the book value of the road on June 30, 1911, was \$1,528,109.58. This valuation includes about 143 acres of land at the purchase price, but does not include 14 acres of riparian rights, granted by the state of New York. The value of these riparian rights was stated to be \$5,000 per acre for the entire strip 450 feet wide, extending from the industrial railroad right of way to the harbor line. The valuation also includes \$251,078.69 working capital. The valuation of the physical property of the industrial railroad, as estimated by the engineers, places the cost of reproduction at \$3,712,558, and the valuation on January 1, 1912, at \$3,541,032. It is stated that this valuation includes all tracks and equipment operated by the industrial railroad, but does not include the tracks and equipment used exclusively for intermill work.

The plant of the steel company is not described on the record, but doubtless consists of the usual furnaces, rolling mills, and other departments of a large steel plant. The general character of service performed by the industrial railroad is the switching of empty and loaded cars between the various departments of the plant of the steel company and the interchange points with the trunk lines. It performs practically all the interworks switching for the steel company, but this service, or a great part of it, is over the tracks of the steel company, which it leases. In addition to the service performed by the industrial railroad, the steel company performs interworks switching with its own power over the narrow-gauge

tracks, and also performs some service on the standard-gauge tracks, for which it leases locomotives from the industrial railroad when needed. About 94 per cent of the total inbound business for the steel company is coal, coke, limestone, and scrap. The ore is brought in by boats owned by the steel company, and unloaded at the steel company's dock; the ore is not handled by the industrial railroad, but is taken from the dock to the bins by the steel company, by means of conveyers. Some of the ore received at the dock is shipped to other points, in which case it is switched by the industrial railroad. It is stated of record that for the year ending June 30, 1911, there were 207,340 cars handled, of which 181,103 cars, or 87.34 per cent, were for the Lackawanna Steel Company, and 26,237 cars, or 12.66 per cent, were for other shippers. Of the total number of cars handled, 97,239 cars were switched to and from connecting carriers. Of this traffic 76.9 per cent was supplied by the Lackawanna Steel Company, and 23.1 per cent was supplied by other shippers.

In addition to the plant of the steel company, the industrial railroad serves the Lackawanna Bridge Company, Rogers-Brown Iron Company, Advance Supply Company, Buffalo Brake Beam Company, Seneca Iron & Steel Company, Corrugated Bar Company, and Trumbull, Mudge & Company, dealers in steel and iron scrap. With the exception of the Rogers-Brown Iron Company and Trumbull, Mudge & Company all of these independent industries purchase a large part of their materials from the Lackawanna Steel Company. It is stated that a considerable number of smaller shippers are served. The plants of the Seneca Iron & Steel Company and the Corrugated Bar Company are not located on the main line of the South Buffalo, but are reached by means of trackage rights over the Buffalo & Susquehanna for a distance of 3,000 feet, and over its own switch track extending from the Buffalo & Susquehanna tracks to the plants, a distance of 1,000 feet.

There is a reciprocal trackage arrangement between the South Buffalo Railway and the Buffalo & Susquehanna Railroad, under which a part of the tracks of each are used by the other, each paying a fixed annual rental, and in addition a proportion of the cost of maintenance and cost of engine service. Under this arrangement the South Buffalo pays the Buffalo & Susquehanna about \$2,400 a year, and the Buffalo & Susquehanna pays to the South Buffalo about \$11,500 a year. The Buffalo & Susquehanna has no track connections with other lines. All interchange of traffic with other line carriers is effected through this trackage arrangement. The cars are moved with the power of the South Buffalo, but the Buffalo & Susquehanna pays for such movements by paying its proportion

of the cost of the engine service. The traffic handled by the South Buffalo for the Buffalo & Susquehanna under this arrangement does not enter into the traffic statistics or operating-revenue accounts, the amounts received from and paid to the Buffalo & Susquehanna being treated as rentals or expense of joint facilities.

The Rogers-Brown Iron Company, the largest outside industry served by the industrial railroad, has its own system of plant tracks and performs with its own power the switching service between the point of interchange with the South Buffalo and the points of placement within the plant. No allowance is made by the South Buffalo to that industry for this service. The Seneca Iron & Steel Company is reached by the Lake Shore Railroad, but the Lake Shore does not perform any service on inbound or outbound material. All interchange for this plant is performed by the South Buffalo.

The purpose of the Pennsylvania in building its tracks to the Rogers-Brown Iron Company was to reach their ore docks, which are immediately north of the iron company's property. The South Buffalo Railroad handles all of the coke, limestone, and some other commodities for the Rogers-Brown Iron Company. This company gets its ore by water over its own docks. While the other outside industries, above referred to, are said to be reached only by the rails of the South Buffalo, they are all located immediately adjacent to the rails of the line carriers and would be immediately on their rails except for the fact that the South Buffalo intervenes between them. Here, again, is an instance where to give the color of a right to receive allowances the industrial railroad has been located surrounding the lands which the industry controls in such manner that access to them from the trunk lines may be had only over the rails of the industrial railroad.

The interchange switching for the steel company and others to the nearest trunk line involves a haul of from 1,750 feet to 2.18 miles outside of the plant property. To the connections farthest from the plants, including the haul through the plant property, the distance ranges from one-half of a mile to 5.75 miles, the average being about 3 miles.

The industrial railroad files tariffs and concurrences with the Commission and receives allowances from the connecting trunk lines of 10 cents a ton on coal, coke, and other raw materials and 15 cents a ton on outbound manufactured products where the rate accruing to the trunk line is 50 cents a ton or over, and where the rate is less than 50 cents a ton no allowance is made; but \$2.50 per car, or the tonnage rate, is collected from the consignee or consignor, and this amount is not absorbed by the trunk line. The charge for handling hot metal around the plant is 13 cents per gross ton, tonnage to be

computed on the daily product of the furnaces. This rate also applies on the movement of raw material from the furnace-receiving track to the required furnace delivery, and to cars of cinders, dust, or dirt to the furnace dump. The industrial railroad issues through bills of lading. It also maintains a depot, team tracks, and other facilities for receiving and forwarding less-than-carload freight, and it is stated that it handles from 35 to 40 cars a month of less-than-carload business. At the time of the hearing it had no freight station, but has since erected a small brick station. This station is within the plant property and is surrounded by a fence. Access to it by shippers is had through a gate.

The annual report for the year ending June 30, 1911, shows a total operating revenue of \$676,471.02, of which \$647,113.33 was derived from freight traffic, \$1,713.95 from passengers, \$27,641 from car service, and \$2.74 from miscellaneous. The operating expenses for the same period were \$481,848.66; net operating revenue, \$194,622.36. There was other revenue to the amount of \$1,097.69, and after the deduction of taxes, interest, and other charges against income there was a net income for the year of \$132,722.59. There was an accumulated surplus from previous years of \$413,269.42, and after the addition of \$83.36 for miscellaneous adjustments there was a net surplus on June 30, 1911, of \$546,075.37. It is shown of record that of the total freight revenue, \$647,113.33, for the year ending June 30, 1911, \$372,263.94, or 57.33 per cent, was derived from allowances by the line carriers; \$266,289.89, or 41.15 per cent, was derived from interworks switching for the Lackawanna Steel Company; and \$8,564.50, or 1.32 per cent, was derived from switching service performed for outside industries.

It was admitted that with the \$500,000 derived from the sale of the capital stock and the outstanding indebtedness of \$300,000 plus the returns from operation, the industrial railroad has been enabled to maintain a first-class railroad for switching purposes in a first-class condition out of the revenue derived from switching, and in addition thereto accumulated a surplus of approximately one-half million of dollars. It is stated that the industrial railroad has never paid any dividends.

The industrial railroad operates a passenger-train service between the plant of the Lackawanna Steel Company and the Delaware, Lackawanna & Western station in the city of Buffalo. This passenger service consists of one train in each direction morning and night, and is operated over 3 miles of the industrial railroad track and 3 miles over the Delaware, Lackawanna & Western track under trackage rights.

This service was necessary to enable the workmen to get back and forth during the time of the construction of the steel company's plant. The service was continued to enable the employees of the steel company to reach the plant, there being many who could not reach Lackawanna in time if they depended on the street-car service. About 75 or 80 per cent of the passengers carried are employees of the steel company. At the time of the hearing a trolley line carried most of the employees because of the transfer privilege in the city of Buffalo.

The industrial railroad is a member of the American Railway Association per diem agreement, the Demurrage Association, Master Car Builders' Association, and interchange inspector's agreement. The roads entering Buffalo have an association, and through their rules have granted the South Buffalo Railway a five-day reclaim on all cars inbound and outbound. If a car goes in loaded and comes out loaded the allowance is 10 days. It is stated that the South Buffalo Railway Company has adopted the code of demurrage rules which are filed with the Commission, and all demurrage is assessed in accordance with these rules. The total demurrage collected from shippers for the year ending June 30, 1911, amounted to \$31,209, of which \$24,875 was collected from the Lackawanna Steel Company, but the payment by an industry to its industrial railroad is simply a transfer of the funds from one pocket to the other.

As in other cases herein described the industry derives considerable advantage from the reclaim allowances to its incorporated railroad. In this instance, as a result of the reclaim arrangement, the industry can use the car for five days less the time actually required to switch it in and out, whereas under the demurrage rule it would be allowed only two days' free time. In a statement prepared by the Commission's examiner it is shown that for the year ending June 30, 1911, the amount of per diem paid was \$162,456.10, to which is added for equipment leased from the Lackawanna Steel Company \$2,550.13, adjustments \$615.35, making a total of \$165,621.58. The amount of reclaims received from the trunk lines for the same period was \$137,441.95, to which is added for equipment leased to the Lackawanna Steel Company \$4,788.23 and for adjustments \$4,268.10, leaving a net amount paid for hire of equipment \$19,123.30.

NORTH BUFFALO RAILROAD.

This case illustrates the methods sometimes resorted to in order to establish in form a railroad service that would seem to entitle the industry to an allowance from the trunk line for switching the inbound material and outbound manufactured products between the plant and a designated point of interchange with the trunk line.

In 1907 or 1908 the Wickwire Steel Company built a blast furnace on the banks of the Niagara River, near the town of Harriet, about midway between the northern limits of Buffalo and North Tonawanda. The plant and facilities cover an area of about 70 acres and include two blast furnaces with a total capacity of 750 tons per day. The land was purchased from the Womalancet Land Company, a syndicate of Buffalo; it is stated that there is no identity of interest between the land company and the steel company.

The particulars concerning the original construction of the track are not given of record, but it is stated that there are 4.76 miles of yard tracks and sidings located in and around the plant of the steel company, and that the equipment consists of 5 locomotives, 2 flat cars, and 2 gondola cars. These tracks are operated in the name of the North Buffalo Railroad, which is not incorporated under the general railroad laws of the state and makes no report to the Public Service Commission; it was incorporated under the general statute. It is owned by the steel company, and all of the tracks and equipment operated are leased from the steel company for an annual rental of \$10,000. At the time of the hearing the investment value of the North Buffalo Railroad, including the right of way and equipment, was stated to be \$129,430.48.

At Harriet the New York Central has a yard for the switching and storage of cars. From this yard it built a spur track to the plant of the steel company, a distance of 2,400 feet. This track, including the right of way, is owned in fee by the New York Central. The right of way was donated by the Womalancet Land Company. The spur track is not used by the New York Central, but is used entirely by the North Buffalo Railroad without charge for rental, and for all practical purposes the New York Central ends at Harriet, which is the designated point of interchange between the North Buffalo and the New York Central. By means of this spur the industrial railroad connects also with the Delaware, Lackawanna & Western and Lehigh Valley at Harriet.

The general character of the service performed by the industrial railroad consists of switching empty and loaded cars between the plant and the interchange tracks of the trunk lines at Harriet, using the tracks owned by the New York Central for this purpose. It also performs all internal switching for the steel company. It is stated of record that in addition to serving the steel company, the industrial railroad is filling the land of the Womalancet Land Company south of the steel company's property with slag from the furnaces; this is done at the expense of the Wickwire Steel Company and without cost to the land company. The steel company owns land that it can use for dumping ground which it will be necessary to fill up

before it can be used for building purposes, but it has no present use for this land and therefore dumps the slag on the land of the Womalandet Land Company as a means of getting rid of it.

It is not apparent on the record that there is any necessity for an intermediate railroad service between the plant and the trunk lines. The New York Central owns the right of way and track between the present point of interchange and the plant of the steel company and can make deliveries and pick up cars at the plant. That this service is performed by the North Buffalo Railroad is due to some form of agreement with the New York Central through which the point of interchange is established at the trunk line yards at Harriet, and the tracks of the trunk line are used by the industrial railroad for the switching service between the two points. It was stated by the principal witness that the steel company would have no objection to the trunk lines performing the service now performed by the industrial railroad if the service was prompt and met the requirements of the furnace operation. In this, as in other cases herein referred to, the whole question seems to rest upon the performance of the service at times and at intervals to meet the requirements of the manufacturing operation. It is stated that if the trunk line undertook to make direct deliveries at the plant it would create great confusion and would seriously interfere with the operations of the furnaces on anything like a proper basis.

At the time of the hearing no allowances were received from the connecting trunk lines, but the industrial railroad is charging the steel company \$2.50 per loaded car in or out on traffic that bears a rate of 50 cents per ton or more for the trunk line haul and 75 cents per loaded car on other traffic, including the internal switching. The steel company gets the benefit of the Buffalo rate with delivery at Harriet on all commodities, irrespective of the line over which they come into Buffalo. On some of the traffic the switching charges between Buffalo and Harriet are absorbed; on other traffic the industrial railroad has through rates in connection with trunk lines.

No. 5915.

CHARLES WEISSE & COMPANY

v.

CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.

Submitted September 22, 1913. Decided January 12, 1914.

Charges for the transportation of 20 sacks of stearic acid from Ivorydale, Ohio, to Sheboygan Falls, Wis., found to have been unreasonable to the extent that they exceeded charges that would have accrued on basis of the aggregate of the intermediate rates contemporaneously in effect. Reparation awarded.

O. M. Rogers and James La Gro for complainant.

Robert H. Widdicombe for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in business at Sheboygan Falls, Wis. By complaint, filed June 30, 1913, it alleges that charges collected by defendants at a rate of 42 cents per 100 pounds for the transportation of a less-than-carload shipment of stearic acid from Ivorydale, Ohio, to Sheboygan Falls, were unreasonable, and in violation of section 4 of the act to the extent that they exceeded charges that would have accrued on basis of the aggregate of the intermediate rates contemporaneously in effect, based on Chicago, Ill. Reparation is asked.

The shipment described in the complaint moved over defendants' lines in July, 1911, and consisted of 20 sacks of stearic acid. It weighed 4,030 pounds, and freight charges were collected in the sum of \$16.93, at the published joint rate of 42 cents per 100 pounds. There were in effect at the same time intermediate class rates on stearic acid in less than carloads of 20 cents from Ivorydale to Chicago, and 20 cents from Chicago to Sheboygan Falls, making an aggregate of 40 cents per 100 pounds. Complainant's sole contention is that the charges were unreasonable to the extent that they exceeded charges that would have accrued on basis of the intermediate rates amounting to 40 cents.

The joint rate of 42 cents is still in effect, but the local rate beyond Chicago was increased to 28 cents prior to the hearing, and the aggregate of the intermediate rates now in effect is 48 cents. The

situation as it existed before the increase was covered by fourth section application of the Chicago & North Western Railway Company, which was not assigned for hearing. As the aggregate of the intermediate rates is now greater, however, than the joint through rate, the application has no further office to perform.

Upon the facts of record we are of opinion and find that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates based on Chicago. As the sum of the intermediate rates now in effect exceeds the joint through rate, no order for the future is necessary.

We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the amount paid and the amount that would have accrued based on the intermediate rates of 20 cents from Ivorydale to Chicago and 20 cents from Chicago to Sheboygan Falls; and that it is therefore entitled to an award of reparation in the sum of 81 cents, with interest from July 30, 1911. An order will be entered accordingly.

29 L. C. C.

No. 4663
WICHITA BOARD OF TRADE
v.
ABILENE & SOUTHERN RAILWAY COMPANY ET AL

Submitted November 23, 1912. Decided January 12, 1914.

1. It appearing that the basis of complaint is discrimination, in that Kansas City, Mo., is a so-called rate-breaking point while Wichita is a transit point for shipments of grain and grain products; *Held*, That upon showing herein the Commission is not at this time prepared to make an order disturbing existing adjustment of rates.
2. Power of Commission to establish through route is limited by act to regulate commerce. Complaint dismissed.

A. E. Helm for complainant.

T. J. Norton, and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway system.

W. F. Dickinson and *S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; El Paso & Southwestern system; and Trinity & Brazos Valley Railway Company.

F. H. Wood for St. Louis & San Francisco Railroad Company.

John G. Schaich for Kansas City Southern Railway Company.

Fred G. Wright and *Henry G. Herbel* for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; International & Great Northern Railway Company; Weatherford, Mineral Wells & Northwestern Railway Company; Texas & Pacific Railway Company; and Opelousas, Gulf & Northeastern Railway Company.

F. C. Dillard, *L. T. Wilcox*, *Baker*, *Botts*, *Parker* & *Garwood*, *J. P. Blair*, *N. H. Loomis*, *H. A. Scandrett*, and *James G. Wilson* for Union Pacific Railroad Company; Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Louisiana Western Railroad Company; Hearne & Brazos Valley Railway Company; Houston & Brazos Valley Railway Company; Houston & Texas Central Railroad Company; Houston, East & West Texas Railway Company; and Houston & Shreveport Railroad Company.

Charles W. Lonsdale and *H. G. Wilson* for Board of Trade of Kansas City, Mo.

W. H. Marshall for Southwestern Missouri Millers' Club.

George Plumb, J. T. White, and E. H. Hogueland for Kansas Public Utilities Commission.

C. V. Topping for Kansas & Missouri Millers' Club.

G. W. Hurd for Abilene Milling Company; Security Flour Mills Company; Shellabarger Mill & Elevator Company; Lee-Warren Milling Company; and Western Star Milling Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The city of Wichita, Kans., is here asking that certain rate-making methods followed by the railroads at Kansas City, Mo., be extended to Wichita. The claim is not made that the rates and practices of the carriers at Wichita are unreasonable in themselves, but that the more liberal practices at Kansas City operate to the disadvantage of Wichita in its endeavors to compete.

The complaint before us relates to the rates upon grain and grain products. The principles involved, however, are of general application. The question at issue is: If carriers so adjust their rates that they end and start at a given city, so that shipments through such city take the sum of the rates to and from it, must a like adjustment of rates be made at all competing points? That is to say, to use a phrase of the railroad world, if rates "break" at one point does the command against discrimination require that they should also be made to break at all rival points?

The usual thing in rate-making is that the return per ton per mile should decrease with distance. It results that the rate per ton per mile for any haul is usually somewhat less than the rate per ton per mile for any shorter haul over a portion of the same route. That is to say, the through rate over any route is usually less than the sum of the rates to and from any intermediate point in such route. In the case of a rate-breaking point, however, a different result obtains. The rate for a shipment through such a point is the sum of the rate to such point plus the rate therefrom to destination. The merchant at such a point may ship goods thereto, merchandise them, and subsequently ship them therefrom at a total freight rate no greater than the through rate from point of origin to final destination. It results that, so far as freight rates are concerned, the jobbers at such a point have an advantage over the jobbers at other intermediate points, because the latter in shipping to and from their places of business must pay railroad rates somewhat higher in the aggregate than the through rates for a continuous haul over the same route.

In its complaint here, Wichita directs attention to the fact that Kansas City is a breaking point for rates upon grain moving from the west to the east and to the south. The grain dealer at Kansas City may ship grain to that point from the west, and may then reship such grain to points east and south thereof at a total transportation expense not greater than the rate on such grain from the interior point of origin to the point of final destination. In making the outbound shipment the Kansas City dealer has his choice of all established routes, without any restriction on account of the fact that the grain may have reached him by way of lines having rails beyond. In the tariff statements, these rates from Kansas City purport to be "reshipping" rates, and an attempt is made to distinguish them from the so-called "local" rates from Kansas City. So far as the case in hand is concerned, it is sufficient to say that they serve to carry all the grain forwarded from Kansas City to the east and south. They could carry no more if they were to be called what they really are, the only rates used or intended to be used between Kansas City and the destinations to which they apply.

At points west of Kansas City, including Wichita, no such reshipping rates are provided; that is to say, rates do not break. Grain dealers shipping to and from such points find themselves forced to pay sums of local rates greater than the through rates from points of origin of the grain to the Missouri River or beyond, unless some other adjustment is made for the reduction of rates in or rates out, or both, so that the sum of the two shall be reduced to the amount of the through rate. The device generally adopted for this purpose is known as transit. Under it grain may be stopped and pass into the possession of the owner for cleaning, grading, mixing, milling, or other commercial process, and then go forward to a new destination at the balance of the through rate from the point from which it was first shipped, with, at some points, a small charge for the services incidental to the delivery at the transit point.

Transit is less desirable than the breaking of rates. At rate-breaking points the grain dealer or miller may ship by any line to any market regardless of the route of the inbound movement, while at transit points the commodity must go to the markets reached by the extension of the route of the inbound movement if the reduction of rates to the basis of the through rate is to be made. In the endeavor to prevent substitution of local grain for transit grain at transit points, with resulting unlawful violations of published rates, the carriers also require accounts of stock in hand and points from which procured, all of which is costly and annoying to shippers, even though necessary under the transit system. At rate breaking points this burden of

policing is avoided, because no substitution at such points can operate to defeat tariff rates.

Wichita has the transit system on liberal and extensive lines. It asks that it be given the rate-breaking system, and so be placed on an equality with Kansas City in the grain business and the milling business.

Wichita is an important and growing grain market. Of the 60,000 carloads of grain shipped from Kansas yearly, about one-fourth is merchandised or milled at Wichita.

The complaint is a request to the Commission to establish all possible through routes by way of Wichita for the transportation of grain from Kansas fields to the south and east. This request disregards the limitation upon the power to establish through routes. The theory of the complaint is that the inbound carrier has no right to be concerned regarding the line of movement of the outbound traffic. This would be so if all the railroads were owned by the government or by a single company, but it is not so under the law as it stands to-day.

Congress has expressly placed upon this Commission the prohibition against forming a through route which gives to the originating carrier less than the full length of its line haul, "unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established."

The matters of which Wichita complains do not arise out of the failure to grant transportation at reasonable rates over fairly direct through routes. Speaking generally, the railroads have so conformed to the law that the grain dealers and millers of Wichita are able to reach all markets over practicable routes. It is when Wichita contrasts its own condition with the more favorable condition obtaining at Kansas City that complaint arises. Kansas City has the rate-breaking system, and Wichita has not. Kansas City thus has some advantages as a trading point intermediate between the fields and the places where the grain is consumed which Wichita, even with its transit system, is denied. It is discrimination of which Wichita complains and not unreasonableness.

A finding that the discrimination between Wichita and Kansas City in the respects above noted is undue and an order that it be removed would be in effect an order that the rate-breaking system at Kansas City be abandoned rather than that it be adopted at Wichita. This is true, because every other market between the grain fields and the points of final consumption of the grain would have the same right as Wichita to demand that it also be relieved from this discrimination. If the discrimination were removed by extending the rate-breaking system, the final result would be that grain rates would be made on an arbitrary mileage system without

reduction in the rate per ton per mile proportioned to the length of the haul. Such a result may finally be reached in rate making but the industries and commerce of the country are now established upon the present basis, and great commercial hardship will inevitably attend the abandonment of the present system. The Commission, in the general public interest of all grain producers, grain dealers, and grain consumers, is constrained at this time to decline to undertake such a revolution.

The alternative to the general extension of the rate-breaking system with the final result of a uniform mileage rate would be the abandonment of the rate-breaking system at Kansas City and like points. Here again the commercial results of such a change in rate-making policy would not be confined to Kansas City. It seems probable that even Wichita would suffer with the balance of the grain-producing region by such a change in rates. The rate-breaking system at Kansas City is established and understood. It does a minimum of harm. As at present advised, the Commission is not disposed to order its abandonment.

Wichita is a great and growing market. Other markets also are developing in competition both with it and Kansas City. The Commission will not regard this question as finally settled. If new light is given or new evils arise, the entire question will be reexamined. The endeavor will be made to keep all points and all markets as nearly upon an equality as the inherent difficulties of the subject will permit.

The present complaint must be dismissed.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 831.
ALEXANDRIA, VA., SWITCHING CHARGES.

Submitted December 22, 1913. Decided February 2, 1914.

Proposed increase in the switching charges on coal and coke by the Southern Railway Company from the Potomac yard, near Alexandria, Va., to Alexandria proper, not justified, but a maximum charge of 20 cents per net ton established for the future.

No appearance for protestants.

C. J. Rixey, jr., for Southern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The rate under suspension in this proceeding is an increased charge published by the Southern Railway for switching cars of coal and coke from what is known as the Potomac yard, situated near Alexandria, Va., to Alexandria proper. The present charge is 11 cents per ton; the increased charge 35 cents per ton.

The coal in question can reach Alexandria via two routes: One via Richmond, in which event the Southern Railway has no part of the transportation except this switch movement; the other via Charlottesville, in which the Southern enjoys a main-line haul of considerable length. The real purpose of the increase is probably to divert traffic to the line of the respondent, but that element of the case was not especially presented and is not considered. There is now on file a tariff charge for the movement of this coal of 11 cents per ton, and that charge is proposed to be increased to 35 cents. The only question for our consideration is upon the reasonableness of the higher rate.

The protestant was not represented upon the hearing, and the only testimony, therefore, is that given by the respondent. From this it appears that the movement in question is really composed of two movements. Potomac yard is operated jointly by the respondent and five other railroad companies. In case of this traffic an engine of the Southern Railway takes the car at Potomac yard and hauls it for a distance of something over two miles over the line of the Washington Southern Railway, under some arrangement with that railroad for the use of its track, to a point where that line touches the line of the respondent, at which point the respondent has yards, where the car is placed upon a hold track. Subsequently

there is a new and an independent movement of the car from this hold track to the yards of the protestant, a distance of nearly two miles. The length of the entire haul is 4.77 miles.

The respondent insists that this movement is in no sense a switch movement proper, but is rather a line movement, and should be subject to the same rate as would a movement between two points separated by that distance upon its main line. It refers us to many instances where in such case a rate as high as 35 cents per ton is applied.

While we are not prepared to fully concede the proposition of the respondent, it is evident that the circumstances under which this movement occurs are such as would justify something higher than for a simple switch movement. Since this charge covers the loaded car in and the empty out, there are in reality four distinct switch movements.

In view of all the circumstances we are of the opinion that the respondent has not justified the charge of 35 cents; but we are further of the opinion that the present rate of 11 cents per ton is somewhat too low and that the respondent may properly impose a charge of 1 cent per 100 pounds, or 20 cents per net ton, for this service. An order will be entered in accordance with the above opinion.

29 I. C. C.

No. 5776.
COMMERCIAL CLUB OF TERRE HAUTE ET AL.
v.
VANDALIA RAILROAD COMPANY ET AL.

Submitted December 16, 1913. Decided January 6, 1914.

1. Complaint alleges unreasonableness *per se* and undue discrimination in the rate adjustment between Terre Haute, Ind., and the Missouri River and territory west thereof, the allegation of undue discrimination being based primarily upon the fact that the Chicago basis of rates is extended to Milwaukee and other Wisconsin points, and to Gary, Ind., Danville, Ill., and certain other Indiana and Illinois points, while it is denied to Terre Haute; *Held*, That the circumstances and conditions affecting the transportation to and from the other points named are substantially dissimilar to those obtaining with respect to the Terre Haute traffic, and that the present adjustment between Terre Haute and this western territory has not been shown either to be unduly discriminatory or unreasonable *per se*.
2. Case largely controlled in principle by *Indianapolis Freight Bureau case*, in which undue discrimination was alleged against Indianapolis in favor of Chicago. 16 I. C. C., 56; 23 I. C. C., 195.

Frank A. Larish, Herman Mueller, and Jas. F. Dougherty for complainants.

John G. Williams for Vandalia Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

D. P. Connell for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

H. G. Herbel and Fred. G. Wright for Missouri Pacific Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

O. B. Cardy and E. H. Seneff for Chicago & Eastern Illinois Railroad Company.

O. C. Wright for Chicago & North Western Railway Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

N. S. Brown for Wabash Railroad Company.

Silas H. Strawn for Chicago Great Western Railroad Company.

F. H. Wood for St. Louis & San Francisco Railroad Company.

E. N. Clark and W. G. Wright for Denver & Rio Grande Railroad Company.

Jas. M. Bryson for Missouri, Kansas & Texas Railway Company.

H. A. Scandrett for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company.

Jas. G. Wilson and *W. G. Neimyer* for Southern Pacific Company.

Wm. F. Peter for Chicago, Terre Haute & Southeastern Railway Company.

W. G. Wright for St. Louis, Iron Mountain & Southern Railway Company, and Western Pacific Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In this complaint, brought by the commercial club and individual commercial and industrial interests of Terre Haute, Ind., it is alleged that the present adjustment of rates between Terre Haute and the Missouri River and points west is unreasonable in and of itself and unjustly discriminatory, in that it is unduly preferential to Chicago and Chicago rate points, including Milwaukee, Manitowoc, and Sheboygan, Wis., Danville, Ill., and Gary and Hammond, Ind., the latter two being immediately contiguous to Chicago. The prayer is for the establishment, in removal of that discrimination, of the Chicago basis of rates from and to Terre Haute.

Terre Haute is situated about 8 miles east of the Indiana-Illinois state line, 178 miles south of Chicago, and 169 miles northeast of St. Louis, on the lines of the Vandalia; Cleveland, Cincinnati, Chicago & St. Louis (Big Four); Chicago & Eastern Illinois; and Chicago, Terre Haute & Southeastern railways. The Big Four and Vandalia reach St. Louis direct from Terre Haute, while the Chicago & Eastern Illinois reaches that Mississippi River crossing via its circuitous route north to Danville, Ill., thence southwest to St. Louis. This Danville-St. Louis line of that carrier connects with its main line extending south from Chicago through Terre Haute to Evansville, Ind. The Chicago, Terre Haute & Southeastern also extends south from Chicago through Terre Haute, thence east to Westport, Ind., and participates in Terre Haute to St. Louis traffic in connection with the Toledo, St. Louis & Western from Humrick, Ill., a junction point north of Terre Haute.

Only the Chicago & Eastern Illinois and the Vandalia publish joint through class rates from Terre Haute to the Missouri River, which are, in cents per 100 pounds:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	86	66	51	38	32	34½	28½	25	21	18

The Big Four and other carriers from Terre Haute construct their through class rates between these points by adding to their local rates to St. Louis (governed by official classification) 32½, 27½, 22,

14½, 11½, and 9 cents, the proportional rates applicable between the rivers on traffic originating east of the Indiana-Illinois state line (governed by western classification):

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	55	41	32	24	20	22	18	15	12	10

These local rates to St. Louis are published as proportional rates to all Mississippi River crossings as far north as East Dubuque, Ill.

From Chicago joint through rates to the Missouri River are constructed by adding to the local rates between the rivers (which it will be noted are higher than the proportional scale referred to):

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	60	45	35	27	22	24½	19½	17	10	11

the differentials 20, 20, 10, 5, 5, 7½, 5, 5, 5, 5, totals of 80, 65, 45, 32, 27, 32, 24½, 22, 15, 16.

The joint through class rates to the Missouri River, published by the Vandalia and the Chicago & Eastern Illinois are therefore higher from Terre Haute than from Chicago by 6, 1, 6, 6, 5, 2½, 4½, 3, 6, 2.

The joint through rates from Terre Haute to the Missouri River in effect via the Vandalia and Chicago & Eastern Illinois are exceptions to the general basis of rates applicable from central freight association territory, in which Terre Haute is situated, namely, the combination on the Mississippi River, using the 55-cent proportional scale referred to between the Mississippi and Missouri rivers, and, as stated, this combination is the basis in effect from Terre Haute via the Big Four and the Chicago, Terre Haute & Southeastern. The original basis from central freight association territory, as well as from east thereof in trunk line territory, was the combination of the local rates to the Mississippi River with the local or 60-cent scale between the rivers. The reasonableness of the latter scale in its application to through traffic originating east of the Indiana-Illinois state line has been heretofore considered by the Commission. *Burnham, Hanna, Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299; *Indianapolis Freight Bureau v. C., C. & St. L. Ry. Co.*, 16 I. C. C., 56; 23 I. C. C., 195; *Warnock Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 546. In the *Warnock case* it was reduced on this through traffic to the 55-cent scale basis which has been referred to as applicable on traffic from Terre Haute via two of the Terre Haute lines—the Big Four and the Chicago, Terre Haute & Southeastern. In the *Indianapolis Freight Bureau case* the proportional rates prescribed for the between-the-rivers portion of the through haul from Indianapolis were substantially the same as the Warnock scale. In that case there was involved the additional question of unjust discrimination in favor of Chicago. At that time the first-class rate from Indianapolis to the Missouri River was 98 cents and the local rate to the

Mississippi River used in its construction was 38 cents. The first-class rate from Chicago was 80 cents. While the Commission found that the rate basis from Chicago was influenced by competition between direct route carriers to the Missouri River, which did not exist to the same degree on traffic from Indianapolis, it also found that there was undue discrimination to the extent that the basis from Indianapolis exceeded that from Chicago by certain amounts, beginning at 13 cents first class. The Commission upon rehearing declined to modify its findings in that and in the *Warnock case*.

The 86-cent scale of joint through class rates from Terre Haute to the Missouri River in effect via the Chicago & Eastern Illinois and Vandalia was originally established by the former carrier in 1909, and this action was followed by that of the Vandalia in November of that year. The testimony is that it was established to meet the rates of the Louisville & Nashville and connections from Evansville, Ind., the Louisville & Nashville having in effect at that and at the present time proportional rates to St. Louis, beginning at 26 cents, first class, which, added to the 60-cent local scale between the rivers, made the 86-cent scale referred to. The Chicago & Eastern Illinois met this rate because at that time its route from Evansville to St. Louis was north from Evansville through Terre Haute, then west from Danville, or north through Terre Haute and Danville to Chicago, thence via the Rock Island, all of these lines then being a part of the Rock Island-Frisco system which has since been dissolved. While the Chicago & Eastern Illinois thus met this 86-cent scale from Evansville, it did not, when the establishment of the Warnock 55-cent scale between the rivers automatically reduced the Evansville rate to 81 cents, also establish the latter scale from Terre Haute, but changed the routing of the traffic to the Baltimore & Ohio Southwestern west from Vincennes, Ind., and to the Southern Railway west from Princeton, Ind., thereby eliminating Terre Haute as an intermediate point, both Vincennes and Princeton being situated on the Chicago & Eastern Illinois south of Terre Haute. We mean by this that the Chicago & Eastern Illinois changed the actual routing of the traffic. The tariffs seem still to provide for routing via Terre Haute. The establishment of the Warnock scale, therefore, affected only such of the rates from Terre Haute as were made on the combination basis, namely, those in effect via the Big Four and Chicago, Terre Haute & Southeastern and connections, which were thereby reduced from 92½ cents to 87½ cents first class.

As already explained, the Warnock scale applies only on traffic originating east of the Indiana-Illinois state line. From Illinois points not intermediate to Chicago the basis in effect to the Missouri River is the combination of the local rates to and from the Missis-

Mississippi River, the former being the intrastate scale to East St. Louis, Ill., which is extended across the river to St. Louis, these total charges being subject, however, to the basis in effect from more distant points in Indiana as maxima. From points in Illinois intermediate to Chicago the Chicago basis is carried not only by the direct lines but also by the indirect routes, some of which practically parallel the Indiana-Illinois state line for a part of their distance. Certain of these latter lines have rails to the Mississippi River; others handle the freight to the river in connection with the Wabash, Big Four, Vandalia, and other lines, but none of them has substantial mileage in central freight association territory.

Danville, Ill., 55 miles north of Terre Haute and one of the three junction points of the Chicago-St. Louis with the Chicago-Evansville lines of the Chicago & Eastern Illinois, was accorded the Chicago basis to the Missouri River by that carrier and, upon its completion, by the Chicago, Indiana & Southern, Danville being intermediate via both lines. Humrick, Ill., 36 miles north of Terre Haute, was also extended the Chicago basis of rates via the Chicago, Terre Haute & Southeastern in connection with the Toledo, St. Louis & Western, it being a junction of the two lines and intermediate to Chicago via that route. Effingham, Ill., was also accorded Chicago rates by the Illinois Central, and this carrier not only extended this application to points intermediate Effingham and the Mississippi River, but likewise extended it to Hedrick, Ind., a point on one of its branches extending eastward across the Indiana-Illinois state line. The publication of this basis from Hedrick is said on behalf of the Illinois Central to have been made merely in the interest of simplicity in tariff publication in order to save publication separately of the rates from that station, no Missouri River traffic originating there.

The Chicago basis has also been extended to Gary, Hammond, and certain other points east, south, and west of Chicago. Gary is 23 miles east of Chicago and about 10 miles east of the state line, and is served both by line carriers and by switching lines connecting with all of the trunk lines entering Chicago. Traffic from Gary to the west is usually not handled through Chicago, but by switching lines under switching tariffs to junction points of the western carriers outside the city. The only substantial traffic from Gary is in iron and steel articles, which move on the fifth-class rate of 27 cents per 100 pounds, which is the same aggregate rate, it may be noted, as applies from Terre Haute, the latter, however, being made by combining a commodity rate of 7 cents to St. Louis with the fifth-class rate of 20 cents between the rivers. It is said that this commodity rate of 7 cents was made without reference to the rate adjustment from Chicago.

Milwaukee and Manitowoc, situated on the west bank of Lake Michigan, are western termini of the Pere Marquette and Ann Arbor railways, their traffic from the east being handled across the lake by car ferry. Chicago rates are published to these points locally from eastern trunk line territory and as proportionals from central freight association territory. Outbound to the Missouri River from those points the Chicago & North Western, and Chicago, Milwaukee & St. Paul railways maintain the Chicago basis of rates. This adjustment is also carried from Sheboygan, a point intermediate to Manitowoc on the North Western. These lines have rails to Omaha and Sioux City, and the Chicago, Milwaukee & St. Paul also reaches Kansas City; but neither of them has a direct route to St. Louis. It is therefore contended that the defendant carriers from Terre Haute are not responsible for the extension of the Chicago rates to and from these Wisconsin points.

The transcontinental traffic from Terre Haute is composed largely of commodities affected by water competition, the rates on which are generally blanketed in points of origin from the Missouri River east to the Atlantic seaboard, and includes as the heavier moving commodities, beer, bridge iron, catsup, iron culverts, enameled ware, and whisky. The less-than-carload commodity rates from Terre Haute are usually made either on the Chicago basis or not more than 10 cents higher.

Sugar from California and Colorado was the only commodity moving eastbound to Terre Haute on which testimony was offered. There are no through rates on this commodity to Terre Haute from either state. From California to Chicago the rate is 60 cents per 100 pounds, minimum 60,000 pounds, and 65 cents when the minimum is 36,000 pounds; and these rates apply to all points in Illinois, except in the western part of the state, as well as to Indiana points near Chicago. The nearest point to Terre Haute to which Chicago rates are applicable is Marshall, Ill., distant 19 miles, from which point to Terre Haute the local rate is 7 cents. From Colorado to Chicago the rate is 25 cents, minimum 60,000 pounds, and 35 cents when the minimum is 33,000 pounds. To St. Louis these rates are 25 and 30 cents, respectively. The local rate to Terre Haute from both St. Louis and Chicago is the fifth-class rate of 11½ cents.

The short-line distance from Chicago to the Mississippi River is 135 miles (to Clinton, Iowa), via the Chicago & North Western; to the Missouri River it is 438 miles (to Kansas City), via the Santa Fe. The short-line distance from Terre Haute to the Mississippi River (St. Louis) is 159 miles, via the Vandalia, and from Terre Haute to the Missouri River (Kansas City) is 446 miles, using the Wabash

between the rivers. The average distance to the Missouri River crossings, Kansas City to Sioux City, inclusive, is about 458 miles from Chicago and about 523 miles from Terre Haute.

It appears that owing to the large volume of traffic originating or transferred at Chicago it is customary to forward through cars to the Missouri River, whereas on Terre Haute traffic rehandling is necessary at St. Louis, and frequently also at East St. Louis, resulting, defendants contend, in a substantial difference in the cost of transportation against Terre Haute. Much the same comparison as from Chicago can, defendants argue, also be drawn with reference to traffic from Gary, owing to its situation and switch connections with reference to Chicago and Chicago carriers.

Defendants rely largely upon our findings in the *Indianapolis Freight Bureau case, supra*, as controlling in this proceeding, while complainant would differentiate the two cases principally upon the ground that Indianapolis is 80 miles east of the Indiana-Illinois state line, while Terre Haute is only 8 miles east of that line, a considerably less distance than the carriers have voluntarily extended their Chicago rates in dealing with Gary and Hedrick.

There appear to be no transportation conditions affecting the traffic from Terre Haute that were not equally applicable to Indianapolis traffic when those cases were decided, or that are not equally applicable in fact to central freight association points generally, to warrant us in making an exception to Terre Haute. Complainants do not suggest any such dissimilarity except the geographical location of Terre Haute nearer the state line than is Indianapolis, and particularly its relative location with Gary in that respect. We do not find that the circumstances and conditions at Terre Haute bear substantial similarity to those at Gary, or that undue discrimination exists in favor of Gary to the disadvantage of Terre Haute. The same observation is true with respect to other points contiguous to Chicago in Illinois and Indiana from which, due to the great growth of Chicago, the existing switching lines, the observance of the fourth section, and perhaps other controlling reasons, the Chicago basis has been made applicable.

The reasonableness of the Warnock scale between the rivers, applicable on through traffic, is not challenged in this proceeding, the complaint of unreasonableness *per se* apparently being based upon the contention that, as the local rates to St. Louis are presumptively reasonable for that local service, they must be held to be unreasonable as factors in constructing through rates. These rates should be considered, however, with reference not only to the nearest crossing (St. Louis), but to their application as proportionals through the upper crossings via the longer routes.

Complainants also contend in this, as did the complainants in the *Indianapolis Freight Bureau case* with reference to the comparative rates through Indianapolis and Chicago, that the relationship between Terre Haute and Chicago from the eastern seaboard should be taken into consideration in fixing the relationship between the two cities outbound to the west in such way as to equalize the through rates through these cities to the Missouri River. We said as to that, in the *Indianapolis case*, that there would be as much reason for equalizing the combination as between Chicago and St. Louis as there would be in equalizing it between Indianapolis and Chicago. These combinations are, in cents per 100 pounds, first class, on Chicago 155, on Terre Haute 161, on Indianapolis 163, and on St. Louis 143.

The considerations which governed the Commission's decision in the *Indianapolis case*, so far as concerns the question of alleged undue discrimination in favor of Chicago, are controlling in this case, and we do not find that the situation as to Gary and the other points specially referred to herein to which the Chicago basis has been extended is substantially similar to the situation presented at Terre Haute; neither do we find that the adjustment to and from Terre Haute complained of is unreasonable in and of itself.

Attention of the carriers is directed to certain through rates from Terre Haute to the Missouri River which are higher than the combination of locals on the Mississippi River found in the tariffs of the Vandalia and the Chicago & Eastern Illinois and specifically referred to at the hearing. It is expected that these carriers will promptly correct such adjustments.

Another contention made by the complainants in this case—that the issues are governed by *Alpha Portland Cement Co. v. B. & O. R. R. Co.*, 22 I. C. C., 446—was also made in the *Indianapolis case*, and the conclusions adverse to this contention made therein are equally applicable here.

The complaint will be dismissed.

29 I. C. C.

No. 3920.

INTERNATIONAL AGRICULTURAL CORPORATION

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Decided January 12, 1914.

1. In awarding reparation the Commission never attempts to determine, in cases like this, in what proportion payment should be made by the various carriers participating in the transportation, but awards for a gross sum against all the carriers.
2. If a consignor brings complaint alleging that a given rate is unreasonable and asking for reparation with respect to a shipment specified, and if upon hearing the Commission finds that the rate is unreasonable and that reparation should be awarded with respect to the shipment in question, but that the freight money was paid by the consignee and not by the complainant, more than two years having elapsed, no recovery of reparation can be had by such consignee.
3. Rate of \$3.25 per ton on sulphuric acid in carloads from Copperhill, Tenn., to Savannah, Ga., was reasonable at the time defendants were exacting \$7.50 per ton, and reparation should be awarded accordingly.
4. If carriers actually collect charges to which they are not entitled, they should pay interest for the use as well as refund the principal itself.

White & Case for complainant.

R. Walton Moore and Frank W. Gwathmey for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Commissioner:

In its original opinion in this case, 22 I. C. C., 488, the Commission found the existing rates on sulphuric acid in carloads to be unreasonable, established new rates to the points named, and held that the complainant was entitled to reparation with respect to past shipments upon the basis of the rates found reasonable. Detailed statements showing shipments with respect to which a recovery of damages was claimed up to the date of the filing of the complaint were attached to the complaint itself, but shipments had continued to be made during the pendency of the proceeding, and would be made until the new rates became effective. The Commission therefore suggested that the parties themselves agree upon the amount of reparation, stating that if such agreement could not be had the matter would be further considered. The parties have agreed apparently as to the shipments which moved, and the difference between the freight money actually paid and what would have been paid under the rates found reasonable by the Commission. There is, however, disagreement as to certain matters of law, and these questions have been submitted by the parties on brief.

First. Shipments to Lancaster, S. C., were delivered by the Lancaster & Chester Railway, one of the defendants in this proceeding. The gross amount of reparation due on account of those shipments has been agreed upon between the parties, but the Louisville & Nashville Railroad has undertaken to apportion this amount between the different carriers engaged in the transportation and to require from each carrier an acknowledgment of the correctness of the amount charged against it, together with an order to pay the same on its account. The Lancaster & Chester Company denies the correctness of the amount apportioned against it and declines to authorize the Louisville & Nashville to make payment on its account, whereupon the Louisville & Nashville states that no payment whatever will be made.

This Commission in awarding reparation never attempts to determine in cases like this in what proportion payment should be made by the various carriers participating in the transportation. Its order is for a gross sum, and runs against all the carriers. In this case we should simply issue an order for the total amount due against all the carriers, including the Lancaster & Chester, leaving them to apportion this amount among themselves.

It may be said, however, that apparently these damages should be apportioned among the carriers upon the basis of the rate established and the divisions of that rate agreed upon among the carriers; that is, each carrier should pay such sum as the amount actually received by it exceeds the amount which would have been received had the rate fixed by the Commission been applied with the division of that rate which the carrier is now accepting. If the carriers have not been able to agree upon divisions among themselves they can apply to the Commission for a determination of that matter.

Second. In case of some of the shipments the freight money was paid in the first instance by the complainant. In case of other shipments the payment in the first instance was by the consignee, but the complainant subsequently reimbursed the consignee for the amounts paid. In both these cases it is admitted that the complainant paid the freight and is entitled to a recovery.

In case of five consignees, to wit: The Empire State Chemical Company, of Athens, Ga.; the Congaree Fertilizer Company, of Columbia, S. C.; the Home Mixture Guano Company, of Columbus, Ga.; the Hartsville Fertilizer Company, of Hartsville, S. C.; and the Catawba Fertilizer Company, of Lancaster, S. C., the freight money was paid by the consignee without right to require repayment from the complainant. The defendants insist that in case of these shipments the complainant is not entitled to recovery.

The plant of one of these companies had not actually begun operations at the time of the filing of the complaint, but was in process

of construction, and this destination was embraced along with the others. In the remaining four instances shipments had been actually made at the alleged unreasonable rates previous to the filing of the complaint, and a list of these shipments in detail was attached to the complaint. It can not be questioned that upon the allegations of the complaint, taken in connection with these detailed specifications of the shipments on account of which a recovery of reparation was asked, the complaint prayed for damages on account of these shipments.

Immediately upon the decision of the case the complainant set about preparing complete lists of all shipments with respect to which it claimed reparation, including those which had moved during the pendency of the case and between the date of its decision and the establishment of the rates found reasonable. These lists which were served upon the defendants included shipments to the five consignees in question, and it did not appear until some time afterwards that the freight had been in fact paid by these consignees and not by the complainant.

The complainant urges that these companies are its subsidiaries and so far a part of itself that its action in the filing of this complaint, and the subsequent proceedings, was in essence their action, but this claim can not be sustained upon the record before us. The statements of the parties in their respective briefs indicate that the complainant has no interest whatever in one of these consignees and that in the others it is a mere stockholder and only interested in the management as is every other stockholder. The operation of the several consignee companies seems to be entirely separate and distinct from that of the complainant. Under these circumstances it can not be held that the filing of this complaint by the complainant was the act of these companies, but upon the other hand this case must be disposed of as though these particular consignees were entirely independent of the complainant.

The question, therefore, is this: If a consignor brings complaint alleging that a given rate is unreasonable and asking for reparation with respect to a shipment specified, and if upon hearing the Commission finds that the rate is unreasonable and that reparation should be awarded with respect to the shipment in question but that the freight money was paid by the consignee and not by the complainant, more than two years having elapsed, can an order be entered against the carrier for reparation in favor of either the consignor or the consignee?

The Commission holds that the filing of an informal complaint covering a particular shipment is sufficient to interrupt the running of the statute, even though the formal complaint upon which an order is subsequently based is not filed for more than two years after the

delivery of the shipment. In *Youngblood v. T. & P. Ry. Co.*, 21 I. C. C., 569, it appeared that in December, 1907, the complainant had made shipments of certain cattle from Midland, Tex., to Kansas City, Mo. The shipments were consigned to a commission firm, Clay, Robinson & Company, who, under the practice in vogue at that market, received and sold the cattle, paid the freight charges, and charged them back to the complainant in their account sales. This commission firm on May 8, 1908, filed with the Commission a claim for reparation on account of these shipments, but without specifying that the claim was filed on account of the complainant. Subsequently, on January 17, 1911, the complainant filed his complaint. The defendants objected that the complaint was not filed until more than two years after the delivery of the shipments, and therefore that no recovery could be had, but the Commission held that the filing of the informal complaint by Clay, Robinson & Company was in effect a filing of the complaint with the Commission and that therefore the jurisdiction of the Commission had not lapsed. This case is not exactly like the one before us. Clay, Robinson & Company were the agents of Youngblood in the payment of this freight. It was a part of their duty to see that the freight paid was correct and to file any claim for overcharge or other unreasonable exaction. In so doing they acted for the shipper.

This Commission held in *Missouri & Kansas Shippers' Asso. v. A., T. & S. F. Ry. Co.*, 13 I. C. C., 411, that a voluntary association could not file a complaint in favor of its members without naming specifically those persons in whose favor the complaint was brought. Again, in *Michigan Hardwood Mfrs.' Asso. v. Transcontinental Freight Bureau*, 27 I. C. C., 32, it was held that the filing of a complaint by a voluntary association of lumber manufacturers would not interrupt the running of the statute as to those members not named in the complaint, but that as to those who were named the complaint was in effect that of the individuals for whose benefit it was brought. It was further held that other members of this association or other shippers of hardwood lumber not members of the association might become parties to the original proceeding but that the period of limitation would be reckoned from the date when they appeared as such parties upon the record. The defendants refer to these cases, especially the latter, as authority for the proposition that while these five consignees might become parties to this proceeding their complaint must be regarded as filed as of the date when they first appear upon the record.

This construction of the statute is apparently correct. No recovery can be had unless claim be filed with the Commission within two years. This must import a filing of the claim by some person entitled either in law or in equity to prosecute and recover on account of that claim. It is possible that if the title were equitable

it might afterwards be perfected, but clearly the filing of the claim by an entire stranger can not operate to defeat the running of the statute. In this case the complainant had no legal or equitable interest in the prosecution of this claim, and its action could in no way inure to the benefit of the real party in interest. We hold, therefore, that, with respect to these five instances where the freight was not paid by the complainant, no recovery of reparation can be had by it.

It may be noted that as soon as the true situation became evident these five consignees at once filed intervening petitions for the recovery of this reparation and that these petitions were filed within the two-year period as to a considerable part of the reparation involved.

Third. The complainant made certain shipments to Savannah, Ga., for which it paid a rate of \$7.50 per ton. Before the filing of this complaint the rate had been reduced to \$3.25 per ton. The complaint asked that it be further reduced and for reparation on account of past shipments.

The Commission in deciding the case declined to disturb the rate of \$3.25, holding that this was sufficiently low. No special finding was made as to reparation by reason of past shipments to this point. The rate to Savannah is largely influenced, and perhaps controlled, by water competition. The rate of \$3.25 which had been already established was not changed because we felt that it was sufficiently low, looking to the inherent reasonableness of the rate itself. That rate was practically in line with other rates established by us to various inland destinations where water competition did not obtain, and we now find that this rate of \$3.25 from Copperhill, Tenn., to Savannah, Ga., was a just and reasonable rate at the time the defendant was exacting \$7.50 per ton, and that reparation should be awarded accordingly.

Fourth. The defendants suggest that no interest should be awarded, but the ground of this suggestion is not clear. The Commission has uniformly allowed interest on claims for reparation, although in determining the period for which interest should be reckoned it has not always inquired with minuteness as to the date when the shipment was delivered and the freight money became payable. There is no apparent reason why, if these defendants have actually collected money of the complainant to which they are not entitled, they should not pay interest for the use as well as refund the principal itself.

While the parties state in their printed briefs filed with the Commission that certain facts have been agreed upon, this does not in our opinion establish those facts in such manner as will justify the issuing of a formal order. If they will join in a stipulation agreeing upon these facts and will file that statement together with the expense bills involved, an order will be forthwith issued.

No. 5700.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF IOWA

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
ET AL.

Submitted November 8, 1913. Decided January 12, 1914.

1. Complaint is made that cars for the transportation of grain are distributed at stations and between shippers at stations throughout the state of Iowa during periods of car shortage upon an inequitable basis. Some shippers are satisfied with the continuance of the present practice which distributes cars, generally speaking, equally between shippers for business in sight ready for shipment, combining in the plan the effort to keep all elevators at a station open for business by giving to the closed elevator such reasonable preference in cars as may tend to accomplish that purpose. Other shippers who are shareholders in cooperatively run elevators advocate the substitution for the present practice of a rule which will distribute cars between shippers or elevators according to their comparative past volume of business over a given period; *Held*, That the situation is one that can not be dealt with by any fixed, arbitrary, and inelastic regulation and that the decision must, in the nature of the case, finally rest in the exercise of a sound discretion in the station agent as to what is right and proper under the circumstances of each case.
2. Distinction drawn between the distribution of cars for this grain traffic and the apportionment of cars for coal under fixed mine ratings.

J. H. Henderson and Dwight N. Lewis for complainants.

Thomas H. Boylan for intervener.

George A. Brown for Chicago Great Western Railroad Company.

James C. Davis and C. C. Wright for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

W. H. Bremner for Minneapolis & St. Louis Railroad Company.

A. P. Humburg for Illinois Central Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railroad Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

What is the proper basis of car distribution to be followed in times of car shortage is the question presented by the grain growers and

shippers of Iowa in this proceeding. The complaint was first brought before the Board of Railroad Commissioners of the state of Iowa by two grain shippers' organizations of the state, the Western Grain Dealers' Association and the Farmers' Grain Dealers' Association. It was found during the course of that investigation that most of the grain traffic involved in the complaint moves interstate, and the Iowa board thereupon filed the present complaint with this Commission on behalf of the two organizations which were complainants before it and on behalf also of all the other growers and shippers of grain in the state. There now develops in the present proceeding a contest of conflicting interests between the two associations named, as a result of which the Farmers' Grain Dealers' Association intervenes specially on behalf of its members. A quotation from intervenor's brief will show the reasons actuating that association in this procedure:

The issues as finally made up now in this case are vastly different than they appeared to be when the complaints, out of which this proceeding grew, were first filed before the Board of Railroad Commissioners of Iowa. At that time it appeared that two large associations, the Western Grain Dealers' Association, represented by Mr. Wells, and the Farmers' Grain Dealers' Association of Iowa were both contending against the railroads for alleged unfair discrimination and practices in the furnishing and allotment of equipment between stations and between shippers at the same station. As the issue now is, the Farmers' Grain Dealers' Association is contending against the carriers and against the Western Grain Dealers' Association, which has signified its satisfaction with the carriers' rules which it formerly alleged to be in discrimination of its rights. It was the apparent insincerity of the Western Grain Dealers' Association in the prosecution of its complaint which induced the Farmers' Grain Dealers' Association to ask leave to intervene in this proceeding.

The present complaint alleges that the carriers' equipment is inadequate at times to properly handle the grain traffic of the state, which condition results in car shortage; that their cars are not distributed equitably between stations, particularly junction points and frequently local points being unduly favored; and that they unduly discriminate in the furnishing of cars between shippers or elevators at stations. It was agreed at the hearing that the complaint of inadequacy of equipment of the different defendant lines, as one of the issues to be passed upon in this proceeding, shall be considered as withdrawn.

The matter of first importance urged is the alleged undue discrimination between shippers at stations; second in importance to this is the question of alleged undue discrimination between stations.

There seems to be in Iowa at present no specific rule for the distribution of cars for grain in times of car scarcity. While varying somewhat in minor details with the various carriers, the general practice of all of them seems to be, broadly speaking, to distribute cars equally among shippers at stations, according to demand and the grain ready for shipment, combining in this plan the effort to keep the business of all shippers moving. For instance, if one elevator is full and another elevator at that station can continue to

store grain as received from the farmers, the effort is to open the closed elevator to the extent that a reasonable preference in car supply to it will accomplish the purpose. If both or all of the elevators at the station are full, the cars are distributed equally to elevators or shippers as needed for grain on hand ready to ship, without regard to the past relative requirements of shippers in times of plentiful supply of cars. The members of the Western Grain Dealers' Association, generally speaking, are satisfied with the present system if impartially administered. The members of the Farmers' Grain Dealers' Association, however, who operate elevators on the cooperative plan want the practice changed by the promulgation by this Commission of a rule under which cars shall be apportioned in times of shortage according to past performance in shipments tendered by individual shippers or elevators over a given period, say six months or a year; that is to say, if in the immediately preceding period agreed upon one shipper or elevator has used six cars as against two used by his competitor at that station, he should continue to receive that proportion of the total number of cars available to that station during the period of shortage, regardless of the amount of grain he may have on hand ready to ship at that time. The larger shipper by past performance would therefore receive three of four available cars at his station when equipment is scarce, although his competitor may have as much or more grain ready for shipment at that station at the time as he has.

The proposed change would be of substantial benefit to the cooperatively run elevators. There are about 220 of these in the state that are members of the intervener association, each having from 130 to 300 shipper members. They are not operated primarily for direct financial profit but more particularly in the interest of economy in marketing the grain of their shareholders, the profit that would otherwise go to the middleman-independent elevator being returned to them as dividends from the venture, the plan enabling them also to receive higher prices for their grain. With 80 cooperative elevators which are not members of the association named there are a total of about 300 such enterprises in the state, distributed usually only one to a station. The total number of elevators embraced within the Western Grain Dealers' Association is about 600. The others that go to make up the total of 1,200 to 1,500 elevators in the state are not associated with either of these organizations. Where in operation the cooperative elevators are said to do on the average from 60 to 75 per cent of the total grain business at their stations. It is therefore desirable to the stockholders of the latter that the larger average proportion of the cars that come to them in the seasons of plentiful supply shall continue during the shortage period. In this connection attention should be directed to the fact

that from 25 to 30 per cent of their purchases are from farmers who are not members of their association or shareholders in any cooperative elevator, and therefore have for shipment grain which is open to the competition of the rival buyers at the various stations.

All parties to and interested in this controversy recognize the difficulties that confront any attempt on the part of the Commission to prescribe a specific rule to govern the distribution of cars during the periods in question. The cooperative elevator interests concede that a rule framed on the basis advocated by them would probably have to be subject to exceptions, but these they regard merely as necessarily incidental to definite rules of practice generally. Particularly, defendants suggest, would it be necessary to provide by exceptions in some way for the track buyer of grain or for a recently started elevator, or for the individual new shipper, none of whom has any record of past performance for the required period as a basis for his immediate demands during the shortage period. Whether the practice of rating based on past performance, once established, would not tend to create during the shortage period a monopoly of the grain-buying business in favor of the cooperative elevator because of the farmers who bring grain to the station being compelled to sell it to the elevator with the assured preference in car supply in order to secure its expeditious handling to market is another question raised of record.

We had a similar situation to this presented in connection with the orange traffic from California. There cars were apportioned in times of shortage on basis of the "crop-holding rule" which took into account the number of carloads of fruit on the trees as the principal factor. The Southern Pacific Company sought to supplant this with the "house rule" which made the basis of apportionment the number of carloads in the shippers' warehouses ready to be loaded. There we said:

We can not hold that the "house rule" works discrimination and subjects the carriers to condemnation under the provisions of the act to regulate commerce. That such rule is not the best which could be put into force seems to be the view of the Southern Pacific's officials, as well as those of the Santa Fe. As a matter of fact, the "house rule" never has been rigidly applied by the Southern Pacific, nor has the "crop-holding rule" been lived up to by the Santa Fe. There must, because of the nature of the traffic, be flexibility in any rule that is put in, if due regard is to be paid to the interest of the shipper, whether he be jobber or grower. Insistence by the railroad that the oranges shall be in the packing houses when the cars are apportioned between shippers will necessarily lead to the picking of large quantities of fruit that will decay before being moved, or will force the grower to withhold his shipments altogether and lose the benefit of the market.

On the other hand, the jobber who buys the product of an orchard should not be limited by the railroad, in his right to market that crop as he sees fit, by a method of car distribution which gives him no greater car supply than a grower who does not wish to sell his crop at that time. The "house rule," when rigidly enforced, tends to

embarrass both shippers and carriers by drawing into houses traffic that can not be moved. The "crop-holding rule," if strictly followed, tends to exclude from shipment traffic offered and ready to move and to fix arbitrarily the equipment which may be placed for a shipper irrespective of his needs. Throughout the record, which is extensive and represents fully the practice of all carriers and the criticism to which each rule may be subjected, there is confession that neither rule may with entire fairness be applied by the carriers under all conditions.

The one proposition which the complainants herein present with apparent confidence in its conclusiveness may be summarized in this question: If we have 50 per cent of the oranges to ship at a certain station, why should we not have 50 per cent of all cars which the railroad may be able to furnish at a time of car shortage?

The weakness of this position is revealed by the further inquiry: How are complainants bound, or how may they be bound, to load 50 per cent of the equipment furnished each day at that station, and what limitation, mechanical or other, is there which prevents the petitioners from offering more than 50 per cent of the available supply of oranges on any one day? The oranges are on the trees ready for picking. There is no physical limitation upon the supply which may be offered at any time.

* * * * *

The whole situation is one which it does not seem to us can be dealt with by any fixed, arbitrary, and inelastic regulation. The carrier must accept responsibility of carrying freight offered for shipment. We can not protect a carrier by the installation of any rule against such responsibility and attaching liability. Such rules as are enforced are not published and filed with the Commission; they appear to be mere rules governing agents in times of emergency; and if such rules were filed we do not understand that the carriers would thereby be protected against a failure to furnish equipment for freight offered. Therefore we shall make no order in this case, for the reason, as above stated, that the "house rule" does not seem to be unduly discriminatory and therefore obnoxious to the act, although it appears from the voluminous record in this case that the "crop-holding rule," as modified and suspended from time to time under the practice of the Santa Fe, more perfectly tends to the satisfaction of shippers and carriers. *California Fruit Growers' Exchange v. So. Pac. Co.* 12 I. C. C., 553, 559, 560.

We think these findings are applicable in principle to the conditions in the grain trade here brought before us. They recognize what we deem to be the controlling feature in the distribution of these cars for grain, that the final decision of the station agent must be the determinative word in the solution of these problems in the numerous emergency cases that will inevitably arise in actual practice. That discretion, it would seem, would have to be widely exercised in any scheme of distribution under definite rule unless the rule itself by its very inflexibility to fit occasions is to be permitted to work the identical alleged inequalities which the attempt is now being made in this proceeding to remedy. The situation is such in the emergencies that will call for this discretion, no two of which will be exactly alike in all their circumstances, that no attempt should be made by us to substitute a new rule or practice unless we can be reasonably assured that the situation will as a whole be materially improved. If the rule of apportionment on basis of past performance must yield, and as frequently, to the occasion as does the present plan, there would seem to be no reason or warrant for the change.

The shippers of Iowa themselves as a body are by no means agreed upon the proper plan of distribution. The former secretary of the Western Grain Dealers' Association testifies that he sent out between 700 and 800 inquiries on the general question. About 100 replies were received, of which only 17 gave answer to the request for specific recommendation. Five of these favored equal distribution among shippers regardless of business, eight with reference to visible business, and four on past record of comparative shipments. Four of the visible business, one of the equal distribution among shippers, and two of the past performance advocates were shareholders in cooperative elevators.

Counsel for complainants in their brief express no specific preference other than for a composite rule with features of each plan, present and proposed, that has been referred to:

In view of the diverse suggestions made by shippers as to the preferred method of distribution of cars at stations between the various shippers at those stations, it is not easy to suggest any rule that could be made universally and equitably applicable. It would seem, however, that some rule might be made providing that, during periods of car shortage, cars should be apportioned to shippers of grain at a station upon some well-defined basis, in order that shippers might understand what they had reason to expect in the matter of distribution of cars when there is a shortage, and in order that the agent of the railway company might be guided in the distribution of such cars. That there is no unanimity among the Iowa shippers as to what particular rule they would prefer is evident from the testimony, but that some rule should be established is self-evident.

It is our belief that during periods of car shortage cars should be apportioned to shippers of grain at a station on the basis of grain actually ready for shipment, whether such shipments are to be made by producers, track buyers, or elevators. But in the formulating of such a rule there should be taken into consideration not only the grain on hand, but that which might be ready for immediate loading and shipment. In arriving at a proper ratio or apportionment as between shippers, past experience should also be taken into consideration, although it might not be considered the controlling factor.

Each of these three propositions should be applied to the individual shippers, and upon these bases they are to receive of the available cars their fair and just proportion or ratio; and while in the final analysis, it will probably be that the agent at each of these stations must make the allotment as between each of the shippers, yet in the doing of this he must observe and follow the rules and requirements, as prescribed by this Commission. The dispatcher must distribute to each of the stations its proper ratio of the cars available, as the needs of the station require, such needs to be determined by the same general requirements as indicated above. There must be no discrimination as between stations, but they must each receive their just proportion. We believe that with some well-defined principle announced there would be little disposition on the part of the shippers or agents of the carriers to disregard it.

Regarding the details as to the methods or means of ascertaining the facts upon which the equitable distribution is to be made, we are unable to make any other suggestions than that the carriers be required to keep such record or statistics concerning each station that they may have knowledge of the needs of each of the stations and shippers at such stations, and be enabled to determine a proper and equitable distribution.

Representatives of the cooperative interests who were asked repeatedly at the hearing to state their proposal in the form of a concrete rule practically admitted their inability to frame a rule to suit all or most occasions. Asked to suggest the principal requirements of such a rule, their counsel states:

I presume to say that they should distribute the cars to the different dealers at a given station in accordance with the capacity of those different elevators at that station, measured by their needs and their requirements in a normal time, or at normal times, at different periods or for one period at a time, for six months perhaps or maybe for a year, maybe for two years, depending upon what the testimony in this case develops to be a reasonable method for determining a rating of a shipper.

With reference to exceptions, I presume the rule should provide that where a new buyer offers grain for shipment that he should be assigned cars summarily and arbitrarily until he has made a basis entitling him to a rating. In fact, some arrangement should be made for exceptions along the line of the coal cases that have been heard before the Interstate Commerce Commission. * * *

With an elevator the capacity of a farmer's house might be 20,000 bushels, but under this pleading capacity has no reference at all to the grain business. The capacity is not measured by that at all, because you will find that some of the smaller houses throughout the year, in normal times, have a greater amount of shipments than the others. There are lots of instances of that kind in this transcript. * * * If a new man embarks in that business * * * arbitrarily assign to him cars until he has established some sort of capacity for himself as a steady shipper. [This arbitrary assignment to be for] as long as this grain is being offered presently each day, but it must not be for grain that he only bought and hoarded up for shipment when the other man could not buy a bushel. [The question over what period his status would be determined] would be determined by whatever business he did. It might be for six months or it might be with the exclusion of what he did during a car shortage time. It might be because he had built a big warehouse or rented the place. No two of these cases would be exactly alike. [The Commission would frame a rule to take care of such a condition as that] by absolutely arbitrary assignment. His rating might not altogether be determined by the amount he shipped during the car shortage period, the amount he had to offer during that period. The rule would possibly provide as I stated here that cars shall in such instances be assigned arbitrarily, and the judgment of the agent would possibly be the only instrument by which that carrier could distribute. * * * I said in case of a track buyer who offers presently stuff to be shipped, as common carriers, if you have the equipment and can give it to him you are bound to do it. * * * The common law requires the carriers to carry all stuff within reason and to the ability of their equipment, as offered, and in the order in which it is offered.

In their brief interveners suggest that—

A rule for rating a shipper of grain must be founded upon the same general principles as a rule for rating a shipper of coal. Capacity to use cars is the determining thing in both cases. All of the rest is the method of measuring capacity. * * * There is no reason for undue apprehension concerning exceptions which may and will arise under any rule. There is hardly a statute or a rule which has not attached to it a proviso. The rule asked may provide general exceptions. When the unusual exception arises then is the time to take care of it, as in all such cases.

It seems to be apparent from the attitude and expressions both of complainants and interveners and from this record in general that

any attempt at substantial change in the present method of distributing grain cars throughout the state of Iowa in times of car shortage would be of doubtful propriety. These periods of car stringency present exceptional cases of emergency and must, in their very nature, be dealt with specially as they arise, and we can not upon this record suggest any specific rule that will take care of the situations presented by them better than under the present general practice, which has for its foundation only what is fair and proper under the facts of each case.

The same contention is made in this case as the complainants urged in the *Orange case, supra*, with respect to the alleged analogy of the grain traffic with the coal traffic in the rating of mines, and we must dispose of it in the same way. While the output of a mine may vary from day to day or month to month, the coal is in the mine, in known ownership, ready to be moved as fast as it can be mined and loaded to meet the demand. The analogy would exist as to grain if it had already been purchased from the different shippers and was in the elevator ready to be tendered to the carrier. But in the present case, as a matter of fact, the condition is different because of the fact that during these periods of car shortage the grain is not already bought and in the elevator, but is being constantly purchased from the farmers contiguous to the station under competitive bids of the rival buyers. The situation as to the grain being ready for shipment and dependent only upon the supply of cars and the demand of the consuming public is therefore not the same as in case of the coal traffic and can not, we think, be treated in the same way. And, as we said in the *Orange case*, at page 560—

The railroad could be swamped with tendered fruit if it were the policy of the shippers to embarrass the carriers. For this reason the analogy as to coal-carrying roads can not be carried out as to the traffic here involved. Coal roads in time of shortage may distribute equipment in proportion to the capacity of the mines to deliver coal, measured by their tippie capacity. A mine can not in good faith ask for more cars than it can load, no matter how great the volume of coal it can theoretically or actually mine. The railroad, by testing the ability of a mine to load cars, has an absolute standard of the mine's capacity from a transportation standpoint. But in the case of oranges the amount to be loaded varies, or may vary, from day to day with the judgment or caprice of the shippers, which may lead them to ship much one day and little another. If orange shipments were regulated automatically, as coal shipment is, there would be no difficulty in applying the "crop-holding rule"; but manifestly such is not the condition, nor a possible condition, upon which this Commission would be justified in basing an order.

Counsel for intervenor association, which advocates the past performance rule, recognizes that it is the duty of carriers to transport freight in the order of its tender to them ready for transportation, and in any attempt at framing a definite rule of car distribution due regard must be given to this requirement. We are not

prepared to hold as a matter of law that the Commission would be justified in requiring or permitting carriers, in times of car shortage, to give to one shipper, who has not at present, but judging from his past performance probably soon will have, grain ready for shipment, preference over another shipper who, regardless of his past volume of business or future prospects in that respect, now has grain already bought and at the station ready to be moved.

Considering the whole record, we think that, as stated in the *Orange case, supra*, "the whole situation is one which it does not seem to us can be dealt with by any fixed, arbitrary, and inelastic regulation." We shall therefore make no further finding, except to suggest that the discretion left with the station agent, which we speak of here, can not be considered to be an arbitrary one to be exercised without due regard to the requirements of substantial justice in each case, but is one which is subject in its exercise to all the provisions of the act, which seek to promote equality between shippers and prevent undue preferences and discriminations. It follows that the carriers should exert every effort to see that their present practice in apportioning cars in times of shortage is administered upon an impartial basis by their agents. The cars should be distributed as nearly as practicable in accordance with the grain offered for shipment day by day and ready for loading within the free time under the demurrage rules, regardless of past performance and regardless of whether such grain is in elevators or elsewhere. For the reasons given and for others too obvious to require specific mention of them, no such rules as properly apply to coal can be properly applied to grain. But the end to be attained is the same in each case—that there shall be relative equality in the distribution of such cars as are available, first, as between shipping points, and second, as between individual shippers at each of such points.

We find equal difficulty in connection with the question of establishing a definite rule for the apportionment of cars between stations. It may be that cars are sometimes distributed inequitably at junction points by some of the carriers, but it seems to us that such questions can be better dealt with in the specific instances in which they may arise. The complaint of undue discrimination against local stations as compared with junction points seems also to be too general in its nature to be covered by any definite findings in this proceeding.

An order will be entered dismissing the complaint.

No. 4981.

PACIFIC CREAMERY COMPANY

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 5422.

ARIZONA CORPORATION COMMISSION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted June 27, 1913. Decided January 5, 1914.

1. Present rates on fuel oil, refined petroleum, and engine distillate from producing points in California, Kansas, Louisiana, and Texas to all points in Arizona found unjust and unreasonable.
2. Defendants may either establish the blanket rates prescribed in the report or may divide Arizona into 50-mile zones, between parallel lines extending north and south, for which rates are prescribed in the report.
3. The Pacific Creamery Company was damaged on account of unreasonable rates on fuel oil from California producing points to Creamery and Gilbert, Ariz., and leave is given to amend statement of shipments so as to include such as have been made during pendency of these proceedings and up to time rate prescribed herein is made effective.

Roland Johnston for Pacific Creamery Company.

F. A. Jones for Arizona Corporation Commission.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

E. W. Clapp for Arizona Eastern Railway Company.

Hawkins & Franklin for Arizona & New Mexico Railway Company.

J. G. Wilson and *C. W. Durbrow* for Southern Pacific Company.

Eugene S. Ives for defendants.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

These complaints by agreement of the parties were consolidated and heard as one case.

The Pacific Creamery Company attacks as unreasonable the rates on fuel oil from California producing points to Creamery and to Gilbert, Ariz. (Pacific Freight Bureau, joint and proportional freight tariff No. 11-A), and seeks reparation for the excess paid on designated shipments. The Arizona Corporation Commission attacks as unjust and unreasonable all the rates on petroleum and its products, including crude oil, refined oil, and engine distillates from

points of origin in California, Kansas, Oklahoma, and Texas to all the points in Arizona, shown in tariffs, Santa Fe system I. C. C. No. 6052; Pacific Tariff Bureau I. C. C. No. 11; Southern Pacific Company I. C. C. No. 3427; Southern Pacific Company I. C. C. No. 3262, and Trans-Continental Freight Bureau (Countiss) I. C. C. No. 950, and asks a general reduction. The complain of the Pacific Creamery Company will be disposed of first.

It may be noted here that fuel oil has practically superseded coal for power purposes in Arizona, particularly with the large consumers.

The California oil field as comprehended by the term "producing points," extends from Los Nietos to Bakersfield, respectively, 18 miles south and 170 miles north of Los Angeles, and is intended to embrace all points in this section from which oil is shipped under the blanket rate.

Creamery is about 10 miles east and Gilbert about 20 miles east of Phoenix, in the state of Arizona. The distance from Bakersfield to Creamery is 612 miles and from Los Nietos it is 458 miles, but all the producing points in this field have been grouped and take the same rate, namely, \$6 per ton, regardless of the distance hauled. This system of grouping is calculated to afford producers equal opportunities in competing with each other and at the same time it seems to be an equitable arrangement from the standpoint of the consumer, since it provides a larger market in which to buy.

From complainant's "statement and expense bills" exhibit it appears that the average car tonnage of the shipments on which reparation is asked was 34.3 tons. The mean distance from the extreme producing points to Creamery is 535 miles. Applying these bases to the rate of \$6 per ton now in effect, we obtain a loaded car-mile earning of 38.5 cents. This result is obtained by multiplying the average car tonnage, 34.3, by the rate per ton, \$6, and dividing by the mean distance, 535 miles. That such a rate is excessive is evident from a comparison with the loaded car-mile earnings for substantially similar transportation shown by the following table:

Comparative rates on fuel oil from California producing points.

From—	To—	Distance.	Rate per ton.	Loaded car-mile earnings (basis 34.3 tons).	Comparative constructive rate, based on distance to Creamery.
		<i>Miles.</i>			
Los Angeles, Cal.....	N. E. Mills, Cal.....	489	\$4.25		
Bakersfield, Cal.....	.....do.....	321	3.40		
Mean.....		405	3.824	32.3	\$5.03
California Oil Field.....	Reno, Nev. (mean distance).	520	4.50	29.8	4.64
Bakersfield, Cal.....	Needles, Cal.....	310	4.00	44.0	6.86
San Francisco, Cal.....	Fernando, Cal.....	463	3.10	23.0	3.58
Los Angeles, Cal.....	Salt Lake City, Utah.....	781	5.00	22.0	3.43

The comparative constructive rate is obtained by multiplying the mean distance to Creamery, 535 miles, by the car-mile earnings as figured on respective comparative rates, and dividing this figure by the average car tonnage, 34.3.

Averaging the five comparative constructive rates shown above furnishes a constructive rate to Creamery of \$1.708.

Traffic conditions generally to each of the points taken for this comparison are fairly comparable; heavy grades are encountered to each of these points; and while some argument has been based upon the increased cost of operation in Arizona, due to inadequacy of water supply, it is to be noted that a considerable portion of the haul to Salt Lake City is across the Nevada desert.

From a full consideration of all the circumstances disclosed by the records we find that the rate complained of is unreasonable and excessive; and in the future a rate no higher than \$4.75 per ton shall be charged for the haul of fuel oil from Los Nietos to Creamery and to Gilbert, Ariz. This rate shall also apply from other producing points within the designated area so long as the present grouping system shall be maintained.

It is found further that complainant, Pacific Creamery Company, has been damaged to the extent of the difference between the freight charges it actually paid at the rate here held to be unreasonable, and the charges that it would have paid on the basis of the rate of \$4.75 per ton, herein found reasonable, as to all the fuel oil received by said complainant, and on which such higher rate was paid, during the period from August 23, 1911, up to the time the rate herein specified is made effective. An itemized statement showing the shipments of fuel oil received over the line of the defendant carriers, and the freight paid thereon, for the period from August 23, 1911, to June 20, 1913, was filed as part of the proof herein. Complainant will be permitted to amend this statement so as to include such further shipments on which the unreasonable rate was paid up to the time the rate herein established is made effective, and upon verification thereof by the respective defendants carrying such shipments a supplemental order awarding reparation will be entered.

Considering now the complaint of the Arizona Corporation Commission, it follows that the circumstances above noted apply with equal force to rates on fuel oil from California points to all points in Arizona. Ninety-six per cent of the consumption of fuel oil in Arizona is by the mines, and to the districts where the mines are located a blanket rate of \$5 per ton is made. Further, it appears that the rate on engine coal from Gallup, N. Mex., the supply field, to Phoenix, Ariz., is \$3.35 per ton with a haul of 421 miles, which, on the 34.3-ton basis, used in the comparisons above, yields a loaded car-mile

earning of 27 cents. On this basis the rate on fuel oil from the California field to Phoenix would be \$4.20. In *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 428, the rate on engine coal from Gallup to Phoenix was reduced to \$2.85 per ton. The hauls are quite comparable, the traffic has to bear a return movement of empty equipment in both instances, and both coal and oil are producers of power. It is our conclusion that the rates now in effect from California producing points to points in Arizona on fuel oil are unreasonably high and that hereafter a rate no higher than \$4.75 shall be blanketed to the mining districts now taking the \$5 rate, nothing appearing in the record which would warrant the breaking up of this blanket; and this rate may be blanketed to all points in the state.

It is urged, and with some force, that a more equitable adjustment would be to establish the rates upon a distance basis and divide the state up into zones separated by parallel lines extending north and south. Such a system was adopted by the Commission in *Corporation Commission of Oklahoma v. A. O. & W. R. R. Co.*, 27 I. C. C., 210, and it appeals to the Commission as an appropriate solution of the rate situation in the present case. In the alternative, therefore, a 50-mile zone, centrally located between parallel lines extending north and south, including Phoenix and Gilbert, shall take a rate not to exceed \$4.75, and for each 50-mile zone east this rate may be increased 10 cents per zone, provided there shall be a like decrease for each zone west of this Phoenix zone.

The rates on fuel oil from the more eastern producing points to Phoenix, Ariz., and the disproportion between the returns on these rates and those accruing from similar transportation between comparative points is well illustrated by the following table:

Comparative rates on fuel oil from the more eastern producing points.

From—	To—	Distance.	Rate.	Loaded car-mile earnings (basis 34.3 tons).	Comparative constructive rate, based on distance to Phoenix.
		<i>Miles.</i>		<i>Cents.</i>	
Beaumont, Tex.	Phoenix, Ariz.	1,350	\$9.30	23.6	.....
Do.	El Paso, Tex.	919	3.30	12.3	\$4.84
Shreveport, La.	do.	834	4.60	18.9	6.06
Beaumont, Tex.	Des Moines, Iowa.	995	5.20	18.0	7.08

Averaging the foregoing constructive rates we obtain a rate to Phoenix of \$6.19; which figure, it will be observed, does not take into consideration the greater distance from these producing points to Phoenix. After consideration of the various matters presented in the records we conclude that the rates on fuel oil from the

more eastern producing points are unreasonably high; and in the future a rate no higher than \$6.19 shall be charged on movements of fuel oil from these points to the Phoenix zone as hereinabove set forth. Such rate may be blanketed to the state of Arizona; or in the alternative it may be increased 10 cents per zone for each zone west, provided there is a like decrease for each zone east of the Phoenix zone.

A reference to the following table will disclose the wide disparity between the present rates from the more eastern producing points to Phoenix, Ariz., on petroleum and its products and the rates to El Paso, Tex., a point similarly situated:

Comparative rates per ton on petroleum and its products from the more eastern producing points.

From—	To El Paso, Tex.		To Phoenix, Ariz.	
	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>		<i>Miles.</i>	
Beaumont, Tex.....	919	\$7.80	1,350	\$24.40
Coffeyville, Kans.....	1,072	8.40	1,501	24.40
Shreveport, La.....	834	8.00	.....	.....
El Paso, Tex.....	.....	.....	434	16.00

The rate of \$7.80 from Beaumont, Tex., to Minneapolis, Minn., a haul of 1,319 miles, is even more significant.

A criterion for determining an appropriate basis for the rates in question may be deduced from the following comparisons:

Comparative rates on petroleum and its products.

From—	To—	Distance.	Rate.	Loaded car-mile earnings (basis 34.3 tons).	Comparative constructive rate, based on distance to Phoenix
		<i>Miles.</i>		<i>Cents.</i>	
Beaumont, Tex.....	El Paso, Tex.....	919	\$7.80	29.1	\$11.45
Coffeyville, Kans.....	do.....	1,072	8.40	26.8	11.72
Beaumont, Tex.....	Minneapolis Minn.....	1,319	7.80	20.2	7.96

Averaging the foregoing comparative rates we obtain a rate from these more eastern producing points to Phoenix, Ariz., of \$10.37. This average rate does not take into consideration the greater distance from these producing points to Phoenix, Ariz. No defense of the reasonableness of these present rates has been offered by the carriers nor have they urged a dissimilarity of traffic conditions between the points taken for comparison, and no such dissimilarity is apparent from the record. The rates from the more eastern

producing points to Phoenix, Ariz., are illustrative of the rates now in effect from these points to all the other points in Arizona. From all the circumstances disclosed by the records it is found that the rates on petroleum and its products from the more eastern producing points to points in Arizona are unreasonably high; and hereafter the rates from said producing points to the Phoenix zone shall not be in excess of \$14.25 per ton. Such rate may be blanketed to all points in the state of Arizona, or in the alternative the rate may be increased 25 cents per ton per zone for each zone west, provided it be decreased in a like amount for each zone east of the Phoenix zone.

The rate on petroleum and its products from the California producing points to Phoenix, an average distance of 535 miles, is \$19. This rate is characteristic of the rates from the California producing points to all points in Arizona. From a consideration of all the facts disclosed by the records it is our conclusion that such a rate is unreasonably high and in the future a rate no higher than \$10 per ton shall be applied to the Phoenix zone. Such rate may be blanketed to all points in the state of Arizona or in the alternative it may be increased 25 cents per ton per zone for each zone east of the Phoenix zone, provided there be a like decrease west. The rates so made shall apply from all of the California producing points within the area designated herein, so long as the present grouping system shall be maintained.

Engine distillate is a distinct petroleum product and it is also apparent from the records that the rates on this commodity from the eastern and western producing points to Arizona are unreasonably high and hereafter such rates shall be made on a basis of 80 per cent of the rates on petroleum and its products, made in accordance with the findings herein, from the respective producing points. These rates may be blanketed to the entire state, or they may be increased 20 cents per zone eastwardly and westwardly depending upon the direction of movement, with the corresponding decrease westwardly and eastwardly.

Considerable argument was offered in the brief of complainant with respect to certain alleged violations of the fourth section on the part of the carriers in the establishment of the rates complained of, but there is nothing in the records which would warrant a determination of that question in the instant case.

An order will be entered in accordance with the foregoing.

29 I. C. C.

No. 4662.

MONTANA PASS SITUATION.

IN THE MATTER OF THE ISSUANCE AND USE OF PASSES, FRANKS, AND FREE PASSENGER SERVICE

Decided February 2, 1914.

Certain practices of the Montana carriers respecting free passes criticized and conditions in Illinois commented upon.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The occasion for a general investigation of the practices of interstate carriers respecting the matter of the free transportation of persons and property is explained in a previous report herein, 26 I. C. C., 491, where the conditions then existing in the state of Colorado are described at some length. In the course of that report we called special attention to the wide distribution of free passes among public officials by certain interstate carriers with lines in that state. Our further investigations in other states as to the practices of interstate carriers in regard to granting free passes to shippers and others indicate that many public officials elsewhere enjoy these privileges.

In looking into these matters in the state of Montana it became necessary to examine the records, at the general offices in Chicago, of two western lines extending thence into that state. Among other records of the Chicago, Burlington & Quincy Railroad Company there was disclosed a file of correspondence between its general counsel on the one hand and, as the letters on their face import, one John T. Denvir on the other hand, a man of that name being at that time a member of the upper house of the Illinois legislature and apparently chairman of what appears to be a joint committee of both houses. The letters purporting to be from Mr. Denvir are on stationery of the committee, showing the coat of arms of the state of Illinois, and the names of other senators and representatives composing what is there described as the Illinois Legislative Public Utilities Commission. The correspondence opens with a letter, to which the signature "John T. Denvir" is affixed, requesting an annual pass over the Burlington lines on account of "Legislative Public Utilities Commission." A reply having been mailed to John T. Denvir, at what is understood to be his regular address, stating that the Burlington

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issues no free transportation, state or interstate, the following communication bearing the same signature in the same handwriting was later received by the general counsel of the company on what appears to be the official letterhead of the committee:

I regret exceedingly to acknowledge receipt of your letter in which you refuse me annual transportation over your lines in Illinois. As chairman of the public utilities commission you can look for legislation that will work hardship to your company, and I wish to assure you that when our commission get through with you that you will find your road in the hands of a receiver, for you certainly are violating the laws of the state in a great many respects and we know it, but have gone along and been friendly to you; but inasmuch as you are inclined to be so diplomatic in your statement that you would not "like to violate the custom you have indulged in," I feel inclined to think that a little resolution with respect to a committee for a thorough investigation of your gross negligence with regards to your methods of procedure will be well to adopt at the next meeting of the senate.

Hoping that you can see fit to favor our commission's request, I am, as ever,
Faithfully, yours,

JOHN T. DENVIR.

When these and other letters in the same file of correspondence were called to Mr. Denvir's attention he denied that the signatures were his or that the letters were written by his authority. When his attention was called to the fact that the above letter was in direct reply to a letter addressed to him, by the general counsel of the Burlington, at his Chicago residence, and that he alone could have used the pass had one been issued, Mr. Denvir vaguely stated that some one had been playing a joke. Although the opportunity for a full explanation was afforded Mr. Denvir, it was not forthcoming, and we deem it our duty to make this record of the matter. It is well to add that our investigations of the records of other carriers at Chicago show that many requests have been made in the past for free transportation for the use of "John T. Denvir." The records of the Illinois Central show that a refusal to issue such a free pass was followed by the receipt of a letter to its vice president as follows:

Replying to your favor, which I am returning to you, will say that I insist you grant me transportation requested, and will not accept no as the answer. In the event you disregard my request you can rest assured that in the next General Assembly, the 48th, of which I will be a member, I will introduce a bill with regard to frontage on the Lake Front, from 68rd street to Randolph street, which belongs to the state of Illinois, and which you realize was never purchased or leased.

Furthermore, if you object you can refuse to honor my annual pass over your lines also. It is not my aim to be disagreeable in the matter, and I am therefore at a loss to understand how you can consistently refuse me.

Soliciting your reply, I beg to remain,

Yours, very truly,

JOHN T. DENVIR.

The signature to this document apparently is in the same handwriting as the signature to the letter quoted above.

In this connection it may be well to say that our investigations in Montana indicate a condition of affairs in that state that we regard as reprehensible. An act, recently enacted by the legislature, was evidently intended to authorize carriers to issue free transportation to state officials when traveling within the state in the public interest; but instead of being administered on that basis it is being made the occasion for a more or less wide distribution of passes among public officials for their personal use and benefit. As the result of our investigations in Colorado, indictments were found and fines have lately been imposed against interstate shippers who have used state passes and against the carriers that granted them such favors; the gift by interstate carriers of state passes to public officials and others who are not shippers is an evil not so directly within our power to redress. On broad general grounds, however, all must condemn such practices, and the carriers that dissipate their revenues in that form and recoup the loss in their rates will find, sooner or later, that this Commission will not lose sight of the practice when their rates are questioned in complaints pending before us.

29 I. C. C.

No. 5512.

ALEXANDER H. ERICKSON COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.

Submitted September 5, 1913. Decided January 6, 1914.

Defendants' inland proportion of through rates on "all commodities" from Chicago, Ill., via Vancouver, B. C., on traffic destined to points in Australia exceeds the inland proportion of through rates from the same point of origin to points in Japan, China, and the Philippine Islands; *Held*, That the different export rates are not shown of record to result in undue prejudice or disadvantage to complainant. Complaint dismissed.

John L. Sweeney for complainant.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

A. H. Lossow for Canadian Pacific Railway Company and Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in assembling and forwarding freight, with principal offices at Chicago, Ill. By complaint filed February 8, 1913, it alleges that defendants' inland proportions of the rates on "all commodities" from Chicago, Ill., via the port of Vancouver, B. C., are unreasonable, unjustly discriminatory, and unduly prejudicial, to the extent that they exceed the inland proportions of the through rates from Chicago to Australia or the Orient via the ports of Tacoma and Seattle, Wash.; or, in the alternative, that the inland proportion to Vancouver on shipments destined to Australia was and is unlawful, to the extent that it exceeds the inland proportion to Vancouver on shipments destined to the Orient. Reparation is sought.

Since January 10, 1910, transcontinental freight-bureau tariffs have provided on "all commodities" (except ginseng, jewelry, automobiles, and a few other articles) from Chicago and other points grouped therewith to Sydney, Australia; Suva, Fiji Islands; and Auckland, New Zealand; minimum weight 20,000 pounds, the following carload commodity rates: When destined to specific points in Japan, China, and the Philippine Islands the proportion to Vancouver was 90 cents per 100 pounds, and the through rates to the destinations named, including ocean carriage, \$1.50 per 100 pounds;

when destined to points in Australia, Fiji Islands, and New Zealand the proportion to Vancouver was \$1.31, and the through rate to the same destinations, including the ocean carriage, \$1.75. Effective December 16, 1912, the inland proportion to Vancouver on business destined to Australia was reduced to \$1.25 and the ocean proportion was increased to 50 cents; but the through rate was not changed. The Chicago, Milwaukee & St. Paul Railway provides, in connection with other carriers, a through "all commodities" rate to the Orient of \$1.50, the inland proportion of which to Seattle and Tacoma is 81.4 cents.

It is provided in tariffs naming the rates that shipments destined to the Orient may be included in mixed carloads with shipments destined to the Australian and New Zealand ports named; the charges to the port to be computed on basis of actual weight of the Australian and oriental shipments, respectively, subject to a minimum weight of 20,000 pounds for the entire carload.

The distance from Chicago to Seattle is 2,200 miles, and from Chicago to Vancouver 2,214 miles. Where traffic for the Orient and for Australia is loaded in the same car the transportation service to Vancouver is identical as to the two classes of traffic, except that the delivery thereof may be at different wharves.

Domestic class rates to north Pacific coast terminals are much higher than the export rates above quoted. The through rate from Chicago to Australia via Vancouver is, in most instances, as low as or lower than the domestic rate from Chicago to the port.

The present first-class rate from Chicago to Pacific coast terminals is \$3.40; to Vancouver \$3.45. The publication of the "all commodities" rate to Vancouver, which as to oriental business is 10 cents less than the class-E rate, and as to Australian business 20 cents less than the class-B rate, together with the privilege of mixing freight for Australia with freight for China and Japan, constituted a substantial reduction from the class rates. This mixing privilege is not granted in connection with domestic rates.

Other shippers to Australia and the Orient (one of whom was engaged in the consolidation and forwarding of freight) were called as witnesses by defendants and testified that they were not interested in the proportions accruing to the rail carriers up to the ports, but solely in the through charge to the foreign destinations; that their contracts are not made for handling goods from Chicago to Vancouver, but from Chicago to the Orient, Australia, and New Zealand; and that they are not concerned with the matter of divisions between the rail and water lines so long as the through rate to the foreign destination is reasonable.

The witness for the Canadian Pacific Railway Company testified that that company owns the only vessels which ply from Vancouver to

the Orient, but that it has no interest in those which transport freight from Vancouver to Australia. Under these conditions, it is the contention of the Canadian Pacific that the division of the through rate from Chicago to the Orient is merely a matter of bookkeeping, inasmuch as the total through charge ultimately reaches the treasury of the Canadian Pacific Railway Company, and that if the inland proportion of the through rate to the Orient were increased from 90 cents to \$1.25 it would not affect the total through rate.

Other than a comparison between the inland proportion to Vancouver with the inland proportion to Seattle and Tacoma complainant has submitted no testimony as to the reasonableness of the inland proportions of the rates to the Orient or to Australia. Upon the facts of record, we are of opinion that neither the inland proportions of \$1.31 and \$1.25 on traffic destined to Australia nor the inland proportion of 90 cents on traffic destined to the Orient has been shown to be unreasonable.

Complainant's allegation that it and the traffic under consideration have been subjected to damage is based upon the argument that the higher inland proportion to Australia has had an unfavorable influence on the volume of business handled by complainant to Australia, and that had the rate been lower complainant would have forwarded a greater volume of traffic. Whether or not more business could have been developed by complainant had the inland proportion been lower is speculative.

The Commission has never held that it is *per se* unlawful to publish different export rates to a port, dependent on the foreign destination of the traffic. In *New Orleans Board of Trade v. I. C. R. R. Co.*, 23 I. C. C., 465, the defendant maintained different export rates on tobacco to the port of New Orleans, dependent upon the destination in Europe. Upon the facts of record the Commission found that the shippers who were paying the higher export rates were subjected to undue prejudice and disadvantage, but expressed no opinion as to whether the carrier might lawfully maintain export rates to New Orleans on traffic destined to South America different from the export rates on traffic destined to Europe. Such differences in inland proportions are always subject to complaint and investigation in any particular case.

Upon the facts of record in this case we are unable to find that the maintenance by defendants of export rates on traffic to Australia in excess of the export rates on traffic to the Orient subjects complainant or its traffic to undue prejudice or disadvantage within the meaning of the act. It follows that the complaint must be dismissed, and it will be so ordered,

No. 4844.

IN THE MATTER OF BILLS OF LADING.
DISCRIMINATIONS RESPECTING LOSS AND DAMAGE CLAIMS.

Decided February 9, 1914.

Carriers and shippers in official and western classification territories, in order to prevent unjust discrimination, have joined in a request for the Commission's approval of a waiver for a specified period of the four-month limitation within which claims for loss, damage, or delay must be presented, as contained in the bills of lading referred to in tariffs on file with the Commission; *Held*, That—

1. The Commission has no authority to order carriers to disregard their tariffs, nor does it feel justified in acquiescing in the adjustment of matters brought into the condition here presented by reason of disregard of tariff provisions, except from the necessity of a situation like this, when to do otherwise must leave uncorrected grossly unjust and widespread discriminations.
2. For reasons given in the report, the carriers should deal with all claims of this character upon their merits in good faith and without discrimination as to this rule regarding the period of time within which such claims should be presented.
3. Reasonableness of such period of limitation not passed on.

PRELIMINARY REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

For the purpose of promoting uniformity as to the substance and form of bills of lading, the carriers operating generally in official and western classification territories, after numerous conferences with shippers and this Commission covering a considerable period of time, agreed upon what was designated as the "uniform bill of lading," which, upon final submission to the Commission, was in a report announced June 27, 1908, recommended by it for use among all carriers; 14 I. C. C., 346.

In that report it was indicated that the Commission would not at that time undertake to order the carriers to use this form of bill of lading, and it was made clear that the recommendation thereof was to be understood as subject to such modification or change as might be found necessary, either by experience or upon further investigation.

The form and contents of the bill of lading thus agreed upon by shippers and carriers, and recommended by the Commission, was adopted by most of the carriers in the territories mentioned and its

provisions embodied in their freight classifications which were published and filed with the Commission, thus becoming a part of their established tariff schedules.

Among these provisions was the following (section 3, paragraph 3):

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

It has been disclosed by investigation, and otherwise, that during much of the period since these provisions became part of the tariff schedules of said carriers, the provision above quoted has to a greater or less extent been disregarded by most or all of them, for various causes. In many instances in the establishment of commodity rates they have not made the proper reference to this provision published in their classifications so as to make it applicable to such commodity rates. In this respect, again, there appears to have been no uniformity of practice.

The observance and enforcement of this limitation as to the time for presenting to the carriers claims for loss of or damage or delay to freight in some cases, and the waiver or disregard of it in others result, of course, in widespread and serious discrimination in the territories mentioned.

The carriers in the south did not generally adopt the so-called "uniform bill of lading," but adopted instead another form known as the "standard bill of lading," which contained many features, including this provision, common to both. These carriers, however, did not make the provisions of their bill of lading a part of their classification or tariff schedules, and there does not appear to be much cause of complaint in this respect in that territory.

The representatives of carriers and shippers alike, appearing in a general proceeding of inquiry respecting the matter of bills of lading now pending before the Commission, have joined in a request for the Commission's approval of a waiver by the carriers of the above provision, limiting the time within which claims of the character referred to might be presented to the carriers, with respect to all such claims presented prior to December 1, 1913, that were not presented within the four-month period, and also all claims accruing within two years prior to the date of this report which have not been presented to the carriers, provided such claims are presented to the carriers on or before April 1, 1914. It is urged that a waiver of this four-months limitation provision to the extent indicated is the only course that will prevent or cure the discrimination otherwise resulting. This is evidently true.

The carriers have sought to justify or excuse their irregular practices as above indicated in disregard of this provision of limitation, while a part of their tariff schedules, upon the ground that it was regarded by them as of doubtful legality, partly because of the existence of state statutes prohibiting and declaring such provisions of limitation to be void. There seems to have been a question as to whether or not such statutes controlled interstate as well as state traffic. It is explained that the carriers have felt that even if the provision referred to was valid as to interstate traffic and not as to state traffic injustice would result by attempting to adhere thereto in regard to the former. Other reasons have also been assigned for the irregularities in this respect which have grown up during the period since the uniform bill of lading was agreed to and its provisions published in the carriers' tariffs as stated. However, following some recent decisions of the Supreme Court of the United States, having particular reference to that of *Adams Express Co. v. Croninger*, 226 U. S., 491, many of the carriers, commencing about December 1, 1913, began to enforce much more rigidly the provision of limitation mentioned, realizing that there was no more authority in law for a disregard of this provision of their tariff than any other.

The Commission can not regard the excuses offered as entire justification for the course pursued. When it becomes apparent to carriers that they can not, ought not, or will not enforce the provisions contained in their established tariffs, whether in regard to matters of the kind here involved, demurrage, reconsignment, or other like practices, as well as to rates, they should change their tariffs in the manner prescribed by law so that their practices may be in conformity thereto. The Commission has not the authority under the law to order them to disregard their tariffs, nor does it feel justified in acquiescing in the adjustment of matters brought into the condition here presented by reason of disregard of tariff provisions, except from the necessity of a situation like this, when to do otherwise must leave uncorrected grossly unjust and widespread discriminations.

For the reasons indicated we can not feel otherwise than that for the purpose of preventing such results the carriers should deal with all claims of this character within the dates herein specified upon their merits without discrimination with respect to this rule regarding the period of time within which they should have been presented. It is expected that this will be done in good faith and that hereafter, in order to avoid discriminations of the kind here presented, the tariff provisions of carriers respecting this question will be rigidly adhered to.

The Commission does not here express any opinion with respect to the reasonableness of the period of limitation contained in this provision, that being a matter for determination in connection with the proceeding of general inquiry above referred to.

INVESTIGATION AND SUSPENSION DOCKET No. 260.
DULUTH, MINN., LOG RATES.

Submitted December 1, 1913. Decided February 9, 1914.

Proposed increased rates on logs from points in Minnesota on the main line of the Great Northern Railway to Superior, Wis., not justified. Increase justified in part on the strength of decision in *Pulp & Paper Mfrs. Traffic Assn. v. C., M. & St. P. Ry. Co.*, 27 I. C. C., 83, but subject to further consideration if, in a proceeding now pending, the decision in that case is modified.

Watson & Abernethy for protestants.

J. F. Finerty, jr., for Great Northern Railway Company.

Powell & Simpson for Minneapolis & Rainy River Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The tariff under suspension in this proceeding increases rates on pine logs from certain points in Minnesota upon the main line of the Great Northern Railway to Superior, Wis. The protestants at whose request the suspension was made are not directly interested in these rates, but entered protest for the reason that if these rates were established and maintained that fact might be of significance as determining the reasonableness of certain other rates in which they were interested. Before the hearing the Mullery-McDonald Company filed an intervening petition and was heard in opposition to the increase. This company owns substantially all the lumber to which the rates in question could apply.

The evidence shows that in 1908 the Mullery-McDonald Company was considering the advisability of purchasing certain lumber contiguous to these stations upon the Great Northern Railway, and applied for a rate to its mill at Superior. The railway company finally stated that a rate of 2 cents per 100 pounds, with an additional switching charge of \$2 per car at destination, would be established. Upon the strength of this the Mullery-McDonald Company bought large tracts of land and proceeded to invest considerable sums in the construction of spur tracks, etc. The rate was duly established and has been maintained since 1909, and large quantities of logs have been moved under it, but very considerable amounts still remain. The first claim of the intervener is that the respondent ought not, in view of the fact that investments have been made upon the strength of this rate, to increase it at this time.

This Commission has been inclined to hold that circumstances like the above were pertinent in passing upon the reasonableness of the rate. If nothing more, they are certainly a strong admission upon the part of the carrier that the rate established is on the whole reasonable. But the Commission itself has always stated that these facts were merely evidentiary and that the question for its determination was not one of good conscience but whether the rate was in fact a reasonable one, and the decision in *Southern Pacific Co. v. I. C. C.*, 219 U. S., 433, has left some doubt whether this sort of evidence should be considered at all. We do not, therefore, sustain this contention of the intervenor.

The statute casts upon the respondent the burden of justifying this increase, and that justification is not altogether satisfactory. The nearest of the stations in question is North End, distant 42 miles; the most remote is Congo, distant 64 miles. It was said that Brookston was that station at which the greater part of the remaining lumber would be loaded, and here the distance is 58 miles. Probably the average haul would be 50 miles.

The present rate is in all cases 2 cents per 100 pounds; the proposed rates are the regular lumber rates of the Great Northern from these same points and run from $3\frac{1}{2}$ cents at the nearest point to 4½ cents at the most distant point. The original claim of the respondent was that the rate on logs should be the same as the rate upon lumber, but upon the trial this claim was abandoned and the respondent stated that in view of the decision of the Commission in *Pulp & Paper Mfrs. Traffic Assn. v. C., M. & St. P. Ry. Co.*, 27 I. C. C., 83, 98, it only claimed and expected to be permitted to establish the same rate on logs which was there found reasonable for the transportation of pulp wood.

The minimum under the present 2-cent rate is 60,000 pounds, and the testimony shows that the average loading somewhat exceeds this. The minimum loading at 2 cents per 100 pounds would produce earnings of \$12 per car, or, for a distance of 50 miles, 24 cents per car-mile. The average earnings per loaded car-mile upon all the business of the respondent for the year ending June 30, 1913, was 17.6 cents.

The testimony shows that these particular shipments moved during the last year in trainloads of 41 cars to the train, upon the average, which would yield the carriers train-mile earnings of approximately \$10. Assuming that this train of cars was moved back empty, the train-mile earnings from the entire transaction would be \$5 per mile. The average train-mile earnings of the Great Northern Railway for the year ending June 30, 1913, were \$4.85.

It should be noted in this connection that these returns embrace no considerable terminal expense at either end of the line. At the point where the logs are taken up the sidings are provided by the shipper, and the cars, as we understand the testimony, are placed ready upon these sidings. At the delivering end there is an additional charge of \$2 per car for moving the carloads to the mill of the protestant.

It appears that the Great Northern Railway usually applies a mileage scale to the movement of logs between points in the state of Minnesota which, if applied to the distances in question, would be somewhat less than the present rate of 2 cents, being 1½ cents for 40 and 45 miles and 2 cents for 50, 55, and 60 miles.

It also appeared that rates by other lines for corresponding distances into Duluth and Superior were in no case more, and usually somewhat less, than the present rate of the Great Northern.

In view of these facts we should not find the justification of this respondent satisfactory were it not for the Commission's decision in the *Pulp & Paper Mfrs. Traffic Asso. case, supra*. In that proceeding the rates on pulp wood from points in Minnesota to points in Wisconsin were attacked. In disposing of the case the Commission established a mileage scale to apply from points of origin in Minnesota up to the gateways through which the traffic moved to other lines and up to junction points with other lines. This mileage scale, if applied in the case before us, would run from 2.5 cents at the nearest to 2.9 cents at the most distant point.

There is nothing in this record to show what should be the comparative rate upon logs and pulp wood, but this Commission is familiar with the conditions of transportation under which these commodities move from its investigations in other proceedings. Pulp wood is somewhat less valuable than logs; it will load as heavily, and it is difficult to assign any reason why the rate upon logs in that form should be more than upon saw logs proper.

Moreover, the protestants expressly concede and insist that the rate upon pulp wood ought not to exceed that upon logs, and that the rates established by the Commission in the above case were too high.

That case was fully heard and carefully considered. The rates prescribed were, to be sure, from points of origin up to junction points and gateways, but this means that they were in effect parts of through rates which might perhaps be lower than these short-distance rates under consideration, mile for mile. The rates on pulp wood so prescribed would apply from these very points to Superior. It is difficult to see how this Commission can refuse to apply those rates in the proceeding before it.

In our opinion the respondent has failed to justify the rates named in the tariff under suspension, but we are further of the opinion that something in excess of the present rates may properly be charged, and that those rates named below would be reasonable and ought not to be exceeded for the future:

To Superior, Wis., from—	Rate.	To Superior, Wis., from—	Rate.
	<i>Cents.</i>		<i>Cents.</i>
North End, Minn.....	2.5	Flint, Minn.....	2.8
Nagonab, Minn.....	2.6	Brookston, Minn.....	2.8
Draco, Minn.....	2.6	Congo, Minn.....	2.9
Brevator, Minn.....	2.7		

An order will be issued establishing these rates for the future, but they and this record will be subject to further scrutiny if in a proceeding now pending before us involving rates on pulp wood from Minnesota to Wisconsin a conclusion is reached different from that reached in the *Pulp & Paper Mfrs. Traffic Asso. case, supra*. This is a suspension proceeding which must be disposed of at this time.

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No. 5423.

ARIZONA CORPORATION COMMISSION

v.

ARIZONA & NEW MEXICO RAILWAY COMPANY ET AL

INVESTIGATION AND SUSPENSION DOCKET No. 266.

ARIZONA WHEAT RATES.

Submitted January 8, 1914. Decided February 9, 1914.

The complaint in 5423 attacks as unreasonable and unduly prejudicial rates on flour and other grain products from Kansas, Oklahoma, Nebraska, Colorado, Iowa, and Missouri to points in Arizona. As illustrative of the adjustment, the rate from Hutchinson, Kans., to Phoenix is \$1.12 per 100 pounds. In Investigation and Suspension Docket No. 266 respondents propose to increase the rate on wheat from the same territory of origin as that involved in 5423 from 58 cents to \$1 per 100 pounds. To California terminals from Hutchinson the rate on wheat is 58 cents and on flour 65 cents. Rates on flour involved in 5423 held to be unreasonable and unduly prejudicial to the extent that they exceed the defendants' contemporaneous rates on flour to the terminals, and proposed increase in the rate on wheat in Investigation and Suspension Docket No. 266 held not to be justified.

In Docket No. 5423:

W. P. Geary, F. A. Jones, A. W. Cole, and C. A. Smith for complainant.

Martin E. Casto for Wichita interveners.

Henderson S. Martin, Meyer Hurley, John M. Kinkel, W. P. Feder, and A. E. Helm for Public Utilities Commission of the state of Kansas, intervener.

Kibley, Bennett & Bennett for intervening Arizona millers.

Hawkins & Franklin and *R. K. Minson* for Arizona & New Mexico Railway Company.

J. G. Wilson, C. W. Durbrow, and Fred B. Wood for Southern Pacific Company; Texas & New Orleans Railroad Company; Union Pacific Railroad Company; and Galveston, Harrisburg & San Antonio Railway Company.

T. J. Norton, E. W. Camp, and James Coleman for Atchison, Topeka & Santa Fe Railway Company and Grand Canyon Railway Company.

Hawkins & Franklin, A. N. Brown, Eugene Fox, and W. C. Barnes for El Paso & Southwestern Company and Morenci Southern Railway Company.

C. W. Clapp and *H. C. Hallmark* for Arizona Southern Railroad Company.

Eugene S. Ives for Arizona Eastern Railroad Company.

In Investigation and Suspension Docket No. 266:

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

Francis M. Hartman for Southern Pacific Company.

R. K. Minson for Arizona & New Mexico Railway Company.

Hawkins & Franklin and *W. C. Barnes* for El Paso & Southwestern Company.

Eugene S. Ives and *C. W. Clapp* for Arizona Eastern Railroad Company.

A. E. Helm for Public Utilities Commission of the state of Kansas.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

These cases were not heard together, but as they are closely related to each other they were argued together and will be disposed of in one report. The complaint in 5423 attacks as unreasonable and unduly prejudicial to Arizona consumers the rate on flour and various mixtures of grain products published in Countiss' transcontinental freight bureau, westbound special tariff, I. C. C. No. 955, which publishes rates on grain and grain products from Kansas, Nebraska, Oklahoma, Colorado, Iowa, and Missouri to Arizona. For the purposes of this report we shall refer to the group of origin situated west of a line drawn north and south through Emporia in Kansas, the rates from which to points on the Santa Fe, taking that delivering carrier and the commodity flour as illustrative, are as follows: To Holbrook, in the eastern part of the state, \$1.05; Winslow (following this line westward across the state), \$1.11; Flagstaff, through Ash Fork to Kingman, in the western part of the state, \$1.12; Prescott and Phoenix (on branch lines), \$1.12. The tariffs grade up into these rates westward from Albuquerque, N. Mex., at 57 cents, through Gallup at 93 cents. Via this line it is 159 miles from Albuquerque to Gallup and 95 miles from Gallup to Holbrook, the first of the Arizona points named in the eastern part of Arizona. The rate on wheat to main line points in Arizona is 58 cents, being graded up from 46 cents at Las Vegas and 52 cents at Albuquerque, N. Mex., into the California terminal rate which is blanketed back over the states of California and Arizona as to main line points. To Phoenix, on a branch line of the Santa Fe, the rate from this Kansas group is 68 cents. Complainant asks that the terminal rate on flour be applied as a maximum at Arizona intermediate points with the 12 per cent spread between the rates on wheat and flour prescribed by the Commission in the case of *Valley Flour Mills v. A. T. & S. F. Ry. Co.*, 16 I. C. C., 73. This case, decided in 1909, followed the case of 29 I. C. C.

Howard Mills Co. v. M. P. Ry. Co., 12 I. C. C., 258, decided in 1907. In the latter case the Commission fixed the spread between the rates on wheat and flour from this group to the California terminals at not to exceed 7 cents, resulting in wheat and flour rates of 58 and 65 cents, respectively. In the *Valley Flour Mills case, supra*, the Commission, following the *Howard Mills case, supra*, fixed approximately the same percentage spread between the wheat and flour rates from the same territory of origin and also reduced the rate on wheat from \$1.18 to \$1 and on flour from \$1.25 to \$1.12, the finding therein in this respect being thus expressed at pages 78 and 79:

We are satisfied that the decision in the *Howard Mills case* was and is right as between the interests then before us, to wit, the Kansas and California millers. Great quantities of wheat are grown and great quantities of flour are milled in both Kansas and California. Limited quantities of wheat are grown in the vicinity of Phoenix and are milled at Phoenix. Both the California miller and the Phoenix miller wish some Kansas wheat for blending purposes. The Kansas miller contends for his right to mill the Kansas wheat and to sell Kansas flour. The carriers may not by any arbitrary or unreasonable adjustment of rates dictate or determine where the wheat shall be milled or where the flour shall be marketed.

The decision in the *Howard Mills case* authorized a rate on flour 12 per cent higher than on wheat. We see no reason to now assume that if Phoenix interests had been represented in that case, as the California interests were, we should have applied to Phoenix any different principle. Applying that principle, we find that, having fixed the maximum rate on wheat from Belpre, Pawnee Rock, and Hutchinson, Kans., to Phoenix, Ariz., at \$1 per 100 pounds, the rate on flour from the same points to Phoenix should not exceed \$1.12 per 100 pounds, and that the rate on flour from the points named to Phoenix should not for the future exceed the rate on wheat by more than 12 per cent.

In this case, as in the *Howard Mills case*, the main question is the relationship between the rates on wheat and on flour. In this case the establishment of proper relationship involves certain reductions in rates which were increased under the decision in the *Howard Mills case*. It is not believed that the adjustment now made affords a basis for reparation.

After the complaint in 5423 was filed the defendants, although they state that the matter had been under investigation for some time previously, filed a tariff with the Commission (Countiss' I. C. C. No. 970), proposing to increase the 58-cent rate on wheat to Arizona points back to the \$1 basis prescribed in the *Valley Mills case, supra*. This tariff was suspended and is the basis of the investigation in Investigation and Suspension Docket No. 266. In the testimony in that proceeding it is contended by the respondents that the 58-cent rate was published in error, proof of which they claim lies in the very fact that the rate was voluntarily reduced nearly 50 per cent below the rate fixed by the Commission in the *Valley Mills case*, and in the further fact that they took prompt steps to correct the error, the tariffs carrying the lower rate having been in effect unchallenged only from September, 1912, until April, 1913, when the tariffs

in correction of the error were filed with the Commission to become effective May 22, 1918.

The South Western Millers League, Wichita milling interests, and the Public Utilities Commission of Kansas have intervened in 5423 in behalf of the complainant, and the Eagle Milling Company and seven other Arizona millers have intervened against its granting.

Wheat is raised in the Salt River Valley of Arizona, but it is of inferior grade compared with Kansas wheat, its flour being sold for the greater part to the Mexican and Indian population. The crop is obtainable only by the use of irrigation, the cost averaging, it is estimated by one of the intervening millers in 5423, \$1.33 per 100 pounds. The average price obtained for it at harvest time has been about \$1.75 per 100 pounds. The millers of Arizona purchased during the year 1912, according to this witness, about 20,000,000 pounds of home-grown wheat, of which they ground about 15,000,000 pounds. They ground approximately 7,000,000 pounds of wheat purchased in other states. At the witness's own mill about 10 per cent of the flour sold is blended, about 10 per cent is made from Kansas wheat, and 80 per cent from Arizona grain wheat.

Complainant asks that the rates on flour be made to grade up gradually toward or to the terminal rate, and we see no reason why this adjustment should not be required to be made. We find no justification for rates on flour and the other grain products in question from the territory of origin involved in this proceeding which are higher to intermediate points in Arizona than to the California terminals.

We find that defendants' rates on flour to points in Arizona from the territory of origin in question are unreasonable and unduly prejudicial to the extent they exceed the rate to the California terminals.

It may be noted that the rate on flour from Kansas City to El Paso is 50½ cents for a distance of 948 miles; from Kansas City to Salt Lake City, 56 cents for 1,287 miles; from Kansas City to Spokane, 70 cents, 1,655 miles. The distance from Hutchinson, Kans., one of the points of origin involved in this proceeding, to Phoenix is 1,265 miles and the rate, as stated, \$1.12.

What we have said with respect to the rate on flour applies also in principle to wheat. It follows that we find the rates in the proposed tariffs now under suspension in Investigation and Suspension Docket No. 266 to be unreasonable and that we shall order them to be canceled.

An order will be entered accordingly in Investigation and Suspension Docket No. 266. In 5423 we shall give the carriers until May 1, 1914, within which to revise the rates therein involved in substantial accordance with our findings herein. If this is not done by that date, an order will be entered in that case.

No. 4606.

YOUNGSTOWN SHEET & TUBE COMPANY ET AL
v.
PITTSBURGH & LAKE ERIE RAILROAD COMPANY.

Submitted May 19, 1913. Decided February 3, 1914.

Rate of 70 cents per net ton for the transportation of bituminous coal in carloads from the Pittsburgh, Pa., coal district to the Youngstown or Valleys district of eastern Ohio and western Pennsylvania, not found unreasonable or unjustly discriminatory. Complaint dismissed.

Richard Jones, jr., William Rand, jr., and James Kennedy for complainants.

Clyde Brown, O. E. Butterfield, and William W. Collin, jr., for Lake Shore & Michigan Southern Railway and Pittsburgh & Lake Erie Railroad companies.

G. B. Gordon and A. P. Burgwin for Pennsylvania Company and its operated roads, Pittsburgh, Youngstown & Ashtabula Railway and Erie & Pittsburgh Railroad companies.

W. A. Parker for Baltimore & Ohio Railroad Company.

Clyde Brown for New York, Chicago & St. Louis Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Chairman:*

Complainants are engaged in the manufacture of pig iron, steel, and steel products in the furnace and mill district of eastern Ohio and western Pennsylvania, known as the Youngstown, or valley district. The carload rate of 70 cents per net ton on coal to that district from the Pittsburgh rate district is alleged to be unreasonable and unjustly discriminatory. Reparation is asked.

The Pittsburgh coal rate district extends 40 miles east and south of Pittsburgh. The valley district is within the area bounded by Lisbon, Sebring, and Leavittsburg, in the Mahoning Valley of Ohio, and Shenango and New Castle, in the Shenango Valley of Pennsylvania.

Complainants' mills and furnaces are located at Lowellville, Struthers, Youngstown, Girard, Niles, and Hubbard, Ohio, and at Sharon and Sharpsville, Pa.

The rates to some or all of the points in the Shenango Valley are intrastate. *Coke Producers Asso. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125.

The petition was filed against the Pittsburgh & Lake Erie Railroad Company only. Leave to intervene was granted to the Pennsylvania Company, operating the Pittsburgh, Youngstown & Ashtabula Railway and the Erie & Pittsburgh Railroad; the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; the Baltimore & Ohio Railroad Company; the New York, Chicago & St. Louis Railroad Company, and the Pennsylvania Railroad Company.

The annual coal-consuming capacity of the valleys is approximately 6,000,000 tons, and that of complainants about 1,764,000 tons.

In November, 1911, complainants requested defendants to reduce the rate on coal from the Pittsburgh district to the valleys, but the request was refused.

The No. 8 coal district of Ohio lies west of Bellaire and Steubenville; No. 6 north of No. 8; the Cambridge district west of No. 8; the Hocking district south of Columbus and the Massillon district just north of No. 6.

The following statement shows distances in miles, rates in cents, and ton-mile earnings in mills from the several districts to various points. Rates are hereinafter stated in cents per net ton.

From—	To—	Distance.	Rate.	Ton-mile earnings.
		Miles.	Cents.	Mills.
DISTRICT.				
Pittsburgh	Steubenville ¹	52	70	13.46
Do	Beaver Falls	59	60	10.17
Hocking	Circleville	61	80	13.11
Massillon	Cleveland ¹	63	70	11.11
Pittsburgh	Midland ¹	66	60	9.99
Massillon	Lorain	70	70	10.00
Do	Mansfield	70	65	9.29
Hocking	Columbus	71	65	9.15
Cambridge	Massillon	75	65	8.67
No. 8	do	75	65	8.67
Pittsburgh	Wheeling ¹	75	70	9.33
No. 8	Canton	77	65	8.44
Cambridge	do	77	65	8.44
No. 8	Alliance	79	60	7.59
Cambridge	Mount Vernon	84	80	9.62
Massillon	Crestline	84	70	8.33
No. 6	Youngstown district ¹	88	70	7.96
Do	Wellington	89	80	8.99
Massillon	Bellevue	91	75	8.24
No. 6	Mount Vernon	91	80	8.79
Pittsburgh	Youngstown district ¹ (P. Co.)	91.72	70	7.63
No. 6	Cleveland ¹	92	70	7.61
Cambridge	Columbus	92	65	7.07
Do	Alliance	94	60	6.58
Hocking	Delaware	95	75	7.89
Massillon	Bucyrus	96	70	7.29
Cambridge	Akron	97	80	8.25
No. 8	Ravenna	97	70	7.21
No. 6	Lorain	97	70	7.21
Do	Mansfield	98	75	7.65
Cambridge	Circleville	99	95	9.80
Pittsburgh	Youngstown district ¹ (P. & L. E.)	99.3	70	7.05
Do	Youngstown district ¹ (B. & O.)	100.2	70	6.93
Cambridge	Wooster	101	80	7.92
Massillon	Tiffin	102	75	7.35
No. 8	Akron	103	80	7.77
Do	Youngstown district ¹	105	70	6.66

¹ Furnace or mill points.

From—	To—	Distance.	Rate.	Ton-mile earnings.
DISTRICT—continued.		Miles.	Cents.	Mills.
Mason...	Sandusky.....	107	75	7.09
Cambridge.....	Ravenna.....	112	80	7.14
Pittsburgh.....	Alliance.....	112	85	7.89
No. 8.....	Akron.....	113	80	7.09
Hooking.....	Springfield.....	115	100	8.65
No. 8.....	Cleveland ¹	115	90	7.78
Hooking.....	Monon.....	116	85	7.83
Pittsburgh.....	Canton.....	130	95	7.21
No. 8.....	Cleveland ¹	135	90	6.67
Cambridge.....	do ¹	135	90	6.67
Pittsburgh.....	Alliance.....	138	95	6.88
Hooking.....	Dayton.....	138	100	7.2
No. 8.....	Lorain.....	140	90	6.43
Pittsburgh.....	Cleveland ¹ (P. Co.).....	158	100	6.33
Do.....	Cleveland ¹ (P. & L. E.).....	159	100	6.29

¹ Furnace or mill points.

From these districts to the points enumerated the minimum distance of 52 miles produces ton-mile earnings of 13.46 mills, which latter figure gradually decreases to 6.29 mills for the maximum distance of 159 miles. A rate of 60 cents applies for various hauls from 59 to 79 miles and to one of 94 miles. A 65-cent rate applies for distances of from 70 to 92 miles. The 70-cent rate applies to hauls which vary from 52 to 105 miles in length and to the following distances to Youngstown: From Pittsburgh district via the Pittsburgh & Lake Erie, 99.3 miles, and via the Baltimore & Ohio, 100.2 miles; from the No. 8 district, 105 miles. These are the greatest distances to which it is applicable. Defendants contend that unless the entire fabric of rates from all these districts is on a higher level than it should be, the valleys rate, which is approximately applicable to about midway of the distance between the minimum and maximum, is in entire harmony with the whole structure and not open to criticism.

The distances used in the above statement to the valleys are the mean average distances. The weighted average distance via the Pennsylvania lines for March, 1912, was 87.43 miles; on the Pittsburgh & Lake Erie for the same month, 93.78 miles, and on the Baltimore & Ohio for the month of July, 1912, 90.6 miles. Complainants reach 87.1 miles as the distance from district to district, including all points of assemblage at one end and of distribution at the other by the following method: In *Boileau v. P. & L. E. R. R. Co.*, 22 I. C. C., 640, we found the weighted average distance from the Pittsburgh district to Ashtabula to be 148 miles. The average distance from Pittsburgh to the valleys district, including all points of distribution, is 66.1 miles. The distance from Ashtabula to Pittsburgh is 127 miles. Deducting this distance from the average distance from the Pittsburgh district to Ashtabula, leaves 21 miles as the average distance over which coal is assembled for shipment to the valleys, which, added to 66.1 miles, gives 87.1 miles.

In 1900 the rate from the Pittsburgh district to the valleys was 60 cents. The 70-cent rate has been in effect since April 1, 1903. During the period 1900 to 1903 the Cleveland rate was 90 cents and since 1903 has been \$1. In 1901 the lake cargo rate was 78; in 1903, 83; in 1907, 88; and in 1912 it was reduced to 78 cents in the *Boileau case, supra*. Complainants contend that the recognized rate difference from the Pittsburgh district to Cleveland on commercial coal over lake cargo coal is 17 cents, and that to the valleys 13 cents lower than on lake cargo coal. That is, the usual differential to Cleveland over the valleys rate is 30 cents, which was split as to lake coal between the two. The differential is still the same, but the split is 8 and 22. Although the Youngstown commercial coal rate was, in 1900 and 1903, 13 cents under the lake cargo rate, that differential was departed from in 1907. However, it is urged that the differential should be restored and the Youngstown rate made 65 cents. A rate long continued is presumptively reasonable, and defendants consider that the fact that the present rate has been maintained unchallenged for a period of 10 years should inure to their benefit and safeguard the present rate to the same extent it has been a deterrent to increases in rates.

In 1904 the Pennsylvania lines hauled from the Pittsburgh district to the valleys 1,181,623 tons, and in 1911, 1,906,896 tons of coal, of which about 26 per cent was consigned to complainants. In the latter year the Pittsburgh & Lake Erie hauled 1,083,872 tons, 55.19 per cent of which went to complainants. The Baltimore & Ohio's tonnage to New Castle, Warren, Youngstown, and Niles from the Pittsburgh district for the year ended June 30, 1912, was 189,770 tons.

The average car loading of complainants' shipments has apparently increased from 27.3 tons in 1900 to 46.8 tons in 1912.

Complainants argue that the rate has been advanced; that the differential basis has been abandoned; that the volume of the traffic has been doubled; that the car loading has been increased; and that a greater number of cars per train are handled.

On October and November, 1911, and in May, 1912, complainants had observations made of trains in motion on the lines of the Pittsburgh & Lake Erie, the Pennsylvania Company, and the Baltimore & Ohio. Of 30 trains so observed, 10 were solid trains of coal, with an average of 64.4 cars per train; the other 20 were made up of coal and other commodities, with approximately the same number of cars. From general observations, however, the witness testified that the average number of cars per train on the Pennsylvania was 50, on the Baltimore and Ohio, 55, and on the Pittsburgh & Lake Erie, 64. It should not be understood from these figures, however, that the

trains were necessarily going to any one point in the valleys, the observations having been made while the trains were on the road in motion.

In the *Coke Producers case*, *supra*, we said:

Defendants have made great improvement in the physical condition of their roads during the past decade. They have eliminated curves and reduced grades thus permitting larger, and necessarily heavier, cars and engines to be employed in this traffic (coke), thereby further increasing the average car and train loadings and enabling the practice of economies that make for relatively lower transportation costs per ton of loading. It is always to be borne in mind that these economies have been effected at the expense of enormous additional outlays.

Complainants obtained a constructive rate by using, first, an exhibit in the *Boileau case*, *supra*, showing the cost per ton of moving lake cargo coal from Glassport, Pa., to Lake Shore Junction, Ohio, via the Pittsburgh & Lake Erie, a distance of 81.9 miles. The number of trains selected was 15; the number of cars handled, 984; number of tons handled, 43,065; average number of cars per train, 65.6; and the average number of tons per car, 43.7. Second, an exhibit from Docket No. 4608, *Youngstown Sheet & Tube Co. v. L. S. & M. S. Ry. Co.* (not yet decided), showing the freight operating expenses of the Pittsburgh & Lake Erie for the year ended June 30, 1911, and an allocation of road and yard movements, respectively, showing resultant costs of each movement as applying to the transportation of freight in carloads. The road movement cost was said to be 3.7876 cents, which, on the average number of tons per car and the distance above given, results in a total cost per ton of 7.1 cents. In the exhibit in the *Youngstown case*, not yet decided, the yard movement cost was said to be \$1.2852 per car and the relative percentage for empty movement 63.87 per cent. The cost of switching, assembling, and distributing would be covered by two units of cost at each end, i. e., distributing the empty cars for loading, collecting the loads and consolidating them into trains at the point where the road movement begins, classifying cars into trains for movement to various destinations, distributing the loaded cars to the plants and collecting the empty cars from such plants. These four units at \$1.2852 per car make the cost per ton 11.76 cents. Aggregating the items, a total cost of 20.14 cents per ton for transporting coal from mines to consumers' yards at Youngstown, Ohio, and returning all cars empty is reached. By superimposing the 1911 freight operating ratio of the Pittsburgh & Lake Erie of 43.32 per cent, the constructive rate arrived at is 46.5 cents.

We said in the *Boileau case*, *supra*, at page 653, that cost figures such as these—

Are mere approximations—especially when applied to a specific branch of the traffic—which are interesting and to a certain extent useful as general guides, but which can not be relied upon as decisive factors.

In this case the distance is greater than 81.9 miles. If the average of 92.1 miles via the Pennsylvania is used, the road haul costs are increased to 9.43 cents. The alleged switching costs are based on the assumption that there are two switching movements at each end of the haul, whereas the evidence shows that in the Pittsburgh district the cars undergo at least five switching operations and that at destination there are more than two switching operations. However, defendants say that, allowing for the switching operations in the Pittsburgh district only, the switching cost is increased from 11.76 cents to 20.58 cents, the total cost to 30.01 cents, and the constructive rate to 71 cents.

Complainants' allegations of discrimination rest on three grounds. First, a relation which existed between the lake cargo rate from the Pittsburgh district to the lake ports and the rate from the Pittsburgh district to the valleys. Prior to 1903 the latter rate was 13 cents under the lake cargo rate, and when that rate was reduced, in the *Boileau case, supra*, no corresponding reduction was made in the valleys rate, notwithstanding the fact that the carriers in that case, as in this, laid particular emphasis on the disruptive effect upon other coal rates of any reduction in the lake cargo rate. But complainants' exhibit with respect to the relative rate situation refutes the assertion of a maintained differential since 1907, on which date and until the reduction of the lake cargo rate to 78 cents, the valleys rate was 18 cents under the lake cargo rate. Second, the haul from the Pittsburgh district to the lower lake ports is on the average 168.5 miles, which, on the present lake cargo rate, produces 4.6 mills per ton-mile, whereas for a little more than half the distance the rate per ton-mile is 7.05 mills from the Pittsburgh district to the valleys. The circumstances and conditions surrounding the transportation of lake cargo coal are dissimilar from those which obtain with respect to the valleys coal. For example, lake cargo coal moves in train-loads to the lower lake ports, whence it moves by water to distant markets, where it comes in competition with coal from other fields. It moves mainly in the summer months and thus affords a market for the producers and business for the carriers during what would otherwise be a dull period. It supplies lading for empty cars in which ore has been transported to the Pittsburgh district from the lake ports. Third, that coal to the valleys district is subjected to unjust discrimination in that it is made to pay an undue proportion of the carriers' gross revenue when compared with other classes of freight, including coal. That is, the train-mile and car-mile earnings on coal traffic on the Pittsburgh & Lake Erie are, respectively, \$20.97 and 37.22 cents, while the revenue per train-mile and per car-mile on all freight on the three principal roads in interest are as shown in the table following.

Road.	Revenue per train- mile.	Revenue per car- mile.
Pennsylvania.....	\$2.85	Cents. 14.69
Pittsburgh & Lake Erie.....	9.12	26.42
Baltimore & Ohio.....	2.55	13.21

In computing the train-mile and car-mile earnings complainants have used 87.1 miles, which gives a revenue per ton of 8.04 mills. We have seen that this distance is too short. The revenue per car-mile on all freight is computed after deducting switching revenue, and includes divisions of through rates. The computations are based on the assumption that coal moves in solid trains of 64 cars to the train, with an average car loading of 46.3 tons. Taking the month for which the highest average was given in an exhibit submitted by the Pittsburgh & Lake Erie of all trains containing coal destined to the valleys, during the month of March, 1912, the average was 15.18 cars of valleys coal per train, and therefore the revenue that was produced by valleys coal per train-mile on the basis of 46.3 tons to the car was \$4.94, instead of \$20.97.

It appears unnecessary, inasmuch as that branch of this case has already been exhaustively treated in the *Boileau case, supra*, to repeat what was there said in reference to the financial condition of the defendants.

Complainants argue that the particularity with which defendants describe the course of transportation of coal is of no evidentiary value in determining the reasonableness of the rate, unless it be supplemented by data, wholly within the possession of the defendants, as to the cost of service. These data were not submitted in rebuttal of the testimony in that respect produced by complainants, and they say:

Such an omission, we contend, has a significance to which the Commission may and should attach importance. The witnesses for the complainants * * * necessarily compiled their cost estimates upon observations of the traffic for a limited period of time. The utter failure to correct this by statistical data possessed by the defendants themselves, and bearing upon the cost of the service at all times of the year, and over a period of many years, justifies and even compels the inference that the production of the complete data would at least confirm the figures produced. This is a well-known and long established principle of weighing evidence.

But defendants reply that even from the information in their possession it is practically impossible to determine with any degree of accuracy the cost of handling a particular class of traffic, because there is no uniformity from day to day in the conditions which obtain in connection with transportation; that is, there may be

weather interference, a difference in temperature, in speed of trains, accidents which occur today are absent to-morrow, the health of the employees is not uniform, stoppages to allow the passage of other trains may change the amount of wages, and other circumstances tend to make it largely conjectural whether data, however carefully and correctly prepared as to a typical train, would be a workable hypothesis on which to base the performances of other trains during the same or other periods of the year. In the face of these uncertainties we think the failure of defendants to rebut the estimates submitted by the complainants, although the information is supposedly peculiarly within their possession, does not, as would be the case under the application of strict rules of evidence, serve to shift the burden of proof to defendants.

Defendants repeat the argument which was strongly emphasized in the *Boileau case, supra*, that the coal rate fabric in this territory and others contiguous thereto is so interrelated and interdependent that if the rate from the Pittsburgh district to the valleys is reduced, it will have the effect of reducing the rates on from 50,000,000 to 67,000,000 tons of coal. They show that there are certain long-established and well-recognized differentials and equalities between the various consuming districts and different producing fields.

We have stated as briefly as possible the essential facts of record on which the parties rely. Minor details which we have considered are not outlined here. Complainants demand a reasonable and non-discriminatory rate which, apparently, on basis of the previous differential of 13 cents under the lake cargo rate from the Pittsburgh district to the lower lake ports, would make the rate to the valleys 65 cents. To determine from the facts before us whether or not a reduction of 5 cents shall be made is a close question. In fact, after a careful review of a somewhat voluminous record and consideration of the briefs and arguments which have been filed and made, this case seems to be one of those which, in the words of the Chief Justice of the Supreme Court of the United States, is within "the flexible limit of judgment which belongs to the power to fix rates." *Atlantic Coast Line v. N. Car. Corp. Com.*, 206 U. S., 1, 26.

The rate which is here challenged has been in effect for 10 years. No action was taken against it until November, 1911, and the present complaint was filed shortly thereafter. We mention this fact mainly because reparation is asked, but also with the view to suggest the rather late awakening to the impression that the rate is unreasonable.

There is force in defendants' argument that the long maintenance of the present rate should help them over the present difficulty, as such a fact has in other cases proved a stumbling block to increases in rates.

Undoubtedly, as indicated in the quotation from *The Coke Producers' case, supra*, the carriers have made great improvements, but in another case we permitted advanced rates because, *inter alia*:

We regard it as unfair to take from the carrier whatever profit it may secure by reason of improvements in its plant and adoption of the most modern methods. 22 I. C. C., 604.

It is not definitely shown, but is doubtless true, that reducing grades, eliminating curves, larger capacity cars, more powerful locomotives, heavier train loading, and other improvements along those lines necessarily make for a lower transportation cost per unit. But, as has been previously indicated, such improvements are accomplished only by heavy outlays of capital on which interest must be paid.

The argument that the rate from Pittsburgh to the valleys has been a certain differential under the lake cargo rate from the same point of origin to the lower lake ports loses its force in face of the fact that from 1907 to the time when the lake cargo rate of 88 cents was reduced to 78 cents in the *Boileau case, supra*, the valleys had a differential of 18 cents under the lake cargo rate. The lake cargo rate is applicable only on coal transshipped by vessels to points beyond. A comparison of the two rates is not illuminative of the reasonableness of the rate here under attack, and we perceive no valid reason for a fixed relation between them.

The rates per ton-mile via the lines of the principal defendants herein are graded quite closely to the rates from the Pittsburgh and adjacent coal districts to various points of destination. The Pittsburgh & Lake Erie rates from the Pittsburgh district to the destinations shown below, with distances and revenue, are:

	Average distance.	Rate.	Per ton- mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>
The valleys.....	99.3	70	7.05
Ashland.....	152	100	6.54
Cleveland.....	159.1	100	6.29
Lorain.....	188.3	100	5.31
Erie.....	192.8	100	5.18
Toledo.....	264.7	125	4.72
Buffalo.....	279.7	125	4.47
Detroit.....	323.7	140	4.33

In view of recent decisions of the Commission in reference to coal, coke, and ore rates, it is unnecessary to reiterate here our opinion of the weight to be given cost estimates. The figures produced, with the corrections and amendments suggested, indicate that the constructive rate of 46.5 cents is considerably too low.

When it is remembered that the valleys rate alone covers a wide district of origin and a large area of distribution, that the service is

satisfactory, that the interrelation between it and many other rates from adjacent districts is involved, it is apparent that we should not condemn it without complete and satisfactory proof.

On January 1, 1903, when the rate from the Pittsburgh district to the valleys was increased from 60 to 70 cents, the rates on coal to many other points were also advanced 10 cents. The valley district has been kept on a relative adjustment as to other points within a vast territory of enormous coal consumption, which is presumably satisfactory to a majority of the coal consumers therein. The tariffs show that when the lake cargo rates were reduced from the Pittsburgh district in the *Boileau case, supra*, the carriers made like reductions in the lake cargo rates from the other competitive fields of production which were not directly affected by our order. This was done because the carriers found or felt themselves obliged to maintain the long established relationship between the rates from the several districts, regardless of the effect upon their revenues. Of course, if it be affirmatively shown that a particular rate is unjust and unreasonable, the fact that other rates adjusted in relation thereto may be affected is no reason for refraining from reducing the rate which has been assailed. But where for a long period of time rates have been the same, and no complaint has been made in reference thereto, the presumption obtains that they are reasonable.

Defendants contend that a rate which has remained stationary for 10 years is relatively lower to-day than it was 10 years ago, in so far as its earning power for the railroad is concerned. That is, although the gross income has increased, the operating, maintenance, and fixed charges, taxes and similar expenses have outstripped the revenue increase, and the net income has decreased.

Many of the facts and arguments which complainants submit as reasons for the reduction in the challenged rate bear a double aspect. For instance, the rate was lower 10 years ago, but the present rate has been maintained for the last 10 years. The statement previously given, applicable from various districts, shows but one rate which for equal or shorter distances, produces a less revenue per ton-mile than does the Youngstown rate.

While many improvements have been made which should and probably do tend to make operating costs less, the benefits thereof have in part at least accrued to complainants. Other things being equal, increased density of tonnage should and ordinarily does result in lowering rates, but the great prosperity of complainants and the augmentation of the movement is likewise suggestive that the 70-cent rate has not subjected complainants to damage or discrimination, nor obstructed the free movement of traffic. In addition, while there was an increase in tonnage from 1904 to 1911 in shipments via the

Pennsylvania lines from the Pittsburgh district to the valleys, only 14,278 more tons were moved in 1908 than in 1904, and in 1911 the movement was 72,478 tons less than in 1910.

In view of all the circumstances and conditions disclosed by the record, we are of the opinion that the rate of 70 cents per net ton on coal from the Pittsburgh district to the valleys is not shown to be unreasonable or unjustly discriminatory.

The complaint will be dismissed.

No. 5419.

BOARD OF TRADE OF THE CITY OF CHICAGO

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted October 17, 1913. Decided February 3, 1914.

1. The failure of the five defendant carriers to absorb the switching charges on grain delivered to Chicago industries off their line while absorbing such charges in the cases of other commodities does not constitute unlawful discrimination. Discrimination under the third section to be undue and unlawful must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored; *Railroad Commission of Kentucky v. L. & N. E. R. Co.*, 10 I. C. C., 173, 190; *Wholesale Fruit & Produce Assn. v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 596; and generally a competitive relation between the commodities in the cases of which discrimination is alleged is essential. *Miner v. N. Y., N. H. & H. R. R. Co.*, 11 I. C. C., 422; *Board of Trade of Chicago v. C. & A. R. R. Co.*, 27 I. C. C., 530, 535.
2. The question as to whether or not the defendants' line charge for shipments of grain to Chicago is unreasonable to the extent that it does not include the switching charge is not for determination in this proceeding. This is true also as to the issue of discrimination between localities, namely, between Chicago and competitive grain markets such as Peoria and Pekin, and between grain-shipping points located on the lines of the defendant roads and cross-country grain-shipping points on the lines of the roads which absorb the switching charges. Issues not clearly raised in the pleadings can not be determined by us. *Commercial Club of Omaha v. C., R. I. & P. Ry. Co.*, 6 I. C. C., 647; *Sinclair & Co. v. C., M. & St. P. Ry. Co.*, 21 I. C. C., 490, 494.

3. The proof adduced on the charge of discrimination against millers in Chicago in favor of millers at points outside of Chicago held not to be sufficient to alter the conclusions on the general charge of discrimination just indicated.
4. The question as to which of the carriers, inbound or outbound, participating in the movement of grain through Chicago should assume the burden of absorption of switching charges, is one which might be more satisfactorily adjusted through negotiation than by decision. Suggestions made regarding the adjustment of this question.

W. M. Hopkins for complainant.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

Garrard Winston for Chicago & Alton Railroad Company.

Fred H. Wood for Chicago & Eastern Illinois Railroad Company.

A. P. Humburg and *R. V. Fletcher* for Illinois Central Railroad Company.

N. S. Brown and *E. R. Newman* for Wabash Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This is a controversy respecting the absorption of switching charges on grain at Chicago growing out of the general arrangement regarding switching charges in the Chicago switching district embodied in the Lowrey tariff, I. C. C. No. 22, which arrangement has, to some degree, borne on the issues in other cases previously considered by us. *Advances in Charges for Switching Ice at Chicago, Ill., and Vicinity*, 24 I. C. C., 660; *Advances on Coal Within Chicago Switching District*, 27 I. C. C., 71; *People's Fuel & Supply Co. v. G. T. W. Ry. Co.*, 27 I. C. C., 24; and *Chicago Switching Charges*, 28 I. C. C., 677.

The history of the Lowrey tariff and of the inception of the present controversy is in brief as follows: For a considerable time prior to the date of the first Lowrey tariff, the situation in Chicago respecting switching charges had been very unsatisfactory, because of the lack of uniformity in the charges of the different switching roads and the practices of the line carriers regarding their absorption, and the consequent difficulty of determining in advance just what charges would be applicable to any movement. After protracted negotiation between shippers and the interested carriers following the promulgation of a rule by the Illinois Railroad and Warehouse Commission which was objected to by the carriers, an agreement was tentatively proposed avowedly designed, while readjusting the switching rates, to bring about the desired simplicity and uniformity. The part of this agreement, which was entered into in May, 1910, here pertinent reads as follows:

29 I. C. C.

PART 1. APPLICATION OF CHICAGO RATES.

A. Chicago rates to apply on all carload traffic to and from all industries, warehouses, and elevators provided with private sidings and located within the Chicago territory, as defined below in section B, the line bringing the traffic into or taking the traffic out of said district to absorb such connecting line switching charges as may be necessary to make delivery to or receive from such industries, warehouses, and elevators when freight charges are \$15 per car or more, and where freight charges are less than \$15 per car, the rates will include such portion of connecting lines' switching charges as will leave the revenue of the carrier the same net revenue as would accrue after absorption of switching charges above authorized out of a charge of \$15 per car.

This, it will be observed, provides in part that on carload traffic the Chicago rate shall apply to deliveries to all industries within the Chicago switching district, and that the line bringing the traffic into the district shall absorb such switching charges as may be necessary to make delivery to the industries. The agreement was eventually embodied in the Lowrey tariff, which also made general provision as to the switching rates. This tariff was concurred in by all the carriers serving Chicago, including the five roads defendant in this case, the Atchison, Topeka & Santa Fe Railway, Chicago & Alton Railroad, Chicago & Eastern Illinois Railroad, Illinois Central Railroad, and the Wabash Railroad, under, however, the general exception from its provisions of coal, coke, live stock, and grain. It now appears that to some extent these commodities, with others not covered by the tariff, have, with the exception of grain, in one way and another been brought within the principle of the Lowrey tariff. The five roads here defendant, however, have steadfastly refused to follow the course of the other western and the eastern carriers serving Chicago in applying the principle to grain brought by them into the Chicago district and delivered to industries off their rails. Their position, in short, is that to do so, that is, to apply the flat Chicago rate to such deliveries, would subject them, in the absorption of the switching charges, to an unjustifiable deprivation of revenue, which they can not afford to lose. They say that the Lowrey tariff is manifestly to their disadvantage in that the industries on their lines in Chicago are few in number in comparison with those on other western and eastern roads having terminals in the Chicago district, and that consequently they have to purchase far more switching service than they sell, at rates in excess of those formerly prevailing. It may be noted in this connection that while it is the fact that the switching charges on other commodities appear in the main to have been increased, the understanding was that the charge on grain should not be increased. Defendants testify further that as to commodities other than grain, they went into the Lowrey tariff reluctantly, because

of the expense, and, indeed, did so only because of the duress in the threat of higher charges to be exacted of them by the large switching roads if they did not adhere to the Lowrey plan. As to the grain, they say that never at any stage of the proceedings did they agree to absorb the charges, nor are they now willing to do so.

The complainant's case, in general, is that the refusal of these five roads to absorb the switching on grain in accordance with the Lowrey plan, while they do absorb the switching charges on a very large percentage of the other commodities carried by them, is unlawful discrimination and entitles complainant to an order from this Commission compelling the defendants to absorb the switching charge on grain. The issue thus presented is quite different from those of the other cases relating to the Lowrey plan, mentioned above. Those cases concerned, in the main, the reasonableness of increases in switching charges made by the carriers after the adoption of and to some degree as a result of the Lowrey tariff. The reasonableness of the Lowrey plan or tariff itself and, specifically, the proposition here involved, that the inbound carrier shall absorb the switching charge, were not determined.

Most of the grain brought to Chicago comes there simply to be marketed on the Chicago exchange and subsequently goes out to destinations beyond. Although there are differences in the tariffs of the several carriers defendant, it may be said in general that this grain which goes through Chicago is brought there on the proportional or specific rates established as a modification of the earlier percentage system of through rates, which proportionals or specifics are less than the local rates to Chicago. On grain which is stopped and marketed in Chicago, while the lower proportional or specific rates are applied, the defendant carriers absorb no part of the switching charge necessary to deliver it to an elevator or warehouse off their own rails, unless the grain is from territory that is competitive as between themselves and other carriers.

It is important to note, however, that it is the present practice of the eastern carriers which take the grain out of Chicago to absorb the switching charges in all cases where these charges are not absorbed by the inbound western carriers. A witness for defendants testified that the history of this practice is as follows: Prior to May, 1902, the date of the first reciprocal agreement respecting switching at Chicago, there were contracts between certain eastern roads and elevator interests operating elevators on those roads under which the inbound switching charges assessed by the eastern roads were refunded on grain passing through those elevators and shipped east on the eastern lines on which the elevators were located. This condition induced other eastern lines to offer

to these elevator interests under tariff publications to refund the same inbound switching charge if the grain were forwarded east by eastern lines other than the one on which the elevator was located. Eventually this competitive condition brought about the result that the eastern lines extended this privilege to elevators located on the western lines, due, presumably, to the fact that the railroads were not able to get sufficient grain tonnage out of the elevators on the eastern roads. It is elsewhere testified that it is an advantage to the outbound carrier to have grain in a market like Chicago put into an elevator on its rails, because it gives that road the first chance to move the business out at equal rates, the inference being that the outbound road should, consequently, be willing to absorb the switching charge necessary to bring it to its elevator. In this general connection defendants contend that the absorption of switching charges has for its basis competitive conditions or an effort to secure traffic or to increase the volume of business, and that as this grain in its outbound movement is competitive between the eastern carriers, it is only right that the eastern carriers should absorb the switching charge rather than the western, which have no interest in the outbound movement.

This absorption by the outbound carriers applies only to shipments all-rail. In the case of shipments which move out via the lake there is, at present, no absorption. Consequently the charges relating to the outbound lake movement, together with the charges paid on shipments for local or final delivery in Chicago, which are not absorbed by defendants unless the grain is competitive, constitute the actual loss to the interests represented in the complaint. This local movement is, as indicated above, relatively small, and the substance of the complaint in this regard seems to lie in the complainant's allegation of unjust discrimination suffered by manufacturers of flour in Chicago, who are compelled to pay the switching charge on wheat milled by them, while flour produced by mills outside of Chicago may be brought into Chicago at the same rate as the wheat and delivered to industries there without the payment of the switching charge.

Respecting the movement of grain through Chicago, reference may be made here to Board of Trade statistics adduced by complainant respecting the receipts and shipments of grain in Chicago for the year 1912. These statistics show that the so-called absorbing lines brought into Chicago in that year 198,628,558 bushels of grain, which represent 69 per cent of the total receipts via all lines. The defendant, or nonabsorbing lines, brought 87,901,350, representing 31 per cent of the total receipts via all lines. The shipments of grain from Chicago via all-rail routes were 168,604,600 bushels, or 78 per

cent of the total shipments via all-rail and via lake. The shipments via lake from Chicago were 47,608,600, or 22 per cent of the total shipments via all-rail and via lake. It is assumed that 22 per cent of 31 per cent, or 6.8 per cent of the total inbound shipments of all lines, would represent the outbound movement via lake of grain brought in by defendant lines, although some question is made as to the accuracy of this assumption.

Both in the testimony and in the briefs there is considerable controversy as to the issues properly before the Commission in this case for decision. The substantial allegation of the complainant's petition reads as follows:

Your petitioner further shows that notwithstanding repeated effort has been made to induce these defendant carriers to apply Chicago rates to and from Chicago industries on grain, as they do on other commodities, these defendants have refused and still refuse to do so. Your petitioner alleges that this results in unjust and unreasonable discrimination against grain and in favor of other commodities contrary to section 3 of the act. And further alleges that the arrangement under which Chicago rates are applied to and from Chicago industries, except grain, is prejudicial to the dealers in grain and contrary to the act, as aforesaid.

The defendants contend that upon this petition the sole issue for determination is whether the failure of the five defendant roads to absorb the switching charges on grain delivered to Chicago industries off their lines, while absorbing such charges in the cases of other commodities, constitutes a discrimination against grain and, incidentally, against dealers in grain in Chicago, unlawful under section 3 of the act. Respecting this issue we are of opinion that unlawful discrimination such as is contemplated in section 3 of the act is not proven. We have held that discrimination under the third section to be undue and unlawful must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored; *Railroad Commission of Kentucky v. L. & N. R. R. Co.*, 10 I. C. C., 173; *Wholesale Fruit & Produce Asso. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 596; and that generally a competitive relation between the commodities in the cases of which discrimination is alleged is essential. *Miner v. N. Y., N. H. & H. R. R. Co.*, 11 I. C. C., 422; *Board of Trade of City of Chicago v. C. & A. R. R. Co.*, 27 I. C. C., 530. Except in the case of flour and wheat, which will be mentioned later, it appears that grain and the dealers in grain are not in competition with the other commodities and the dealers in those commodities in the cases of which the switching charge is absorbed. It was testified by complainant's witnesses that if the defendants were to include these other commodities in the list of those on which they would not absorb switching charges grain

and the dealers in grain would derive no advantage. Consequently an alternative order by the Commission such as might be expected to issue if the discrimination were proved, to the effect that the defendants should either absorb the charges on grain or forbear to absorb the charges on the other commodities, would be of no benefit to the complainants.

In their effort to prove discrimination against the commodity grain the complainants propound the proposition that the charge on every article transported should bear a fair relation to the charge for every other article transported, so that each article may pay its fair share and no more of the total transportation charge on all articles. It is argued that the defendants' practice of failing to absorb the switching charges on grain while absorbing them on a very large percentage of the other commodities carried by them is in violation of this principle. While this principle generally may be regarded as expressing a sound view, it would seem to go to the matter of the general classification of commodities and the reasonableness of rates judged by comparative standards rather than to the matter of discrimination. In this connection it is to be said that both in the hearing and in the complainant's first brief the statement was made that neither the reasonableness of the line charge of the defendants nor of the switching charges to be absorbed were in issue. In complainant's reply brief, however, considerable argument is made on the proposition that the reasonableness of the line charge is in issue in the sense that the Commission is to determine whether or not the line charge is unreasonable to the extent that it does not include the switching charge. Defendants contended that this issue was not raised by the pleadings and vigorously objected to the introduction of evidence along this line on the ground that they were not prepared to defend on any such issue. We believe their contention is correct, and that the Commission may not properly be expected to render judgment upon the issue of the reasonableness of the line-haul rates in this proceeding. While, as is well known, the Commission's practice is in no degree technical we have hitherto held that issues not clearly raised in the pleadings can not be determined by us. *Commercial Club of Omaha v. C. R. I. & P. Ry. Co.*, 6 I. C. C., 647; *Sinclair & Co. v. C. M. & St. P. Ry. Co.*, 21 I. C. C., 490. Any other rule would not only be unfair to the defendant in compelling it to come to trial uninformed of the issues upon which it is expected to defend, but in the majority of instances would entail the consequence that records would be presented to the Commission in a most unsatisfactory state for determination because of the failure of the parties to come to an issue and the resulting inadequacy of tender of proof on both

sides of the issues which might be involved. Such a condition is hardly conducive to just and satisfactory adjudication.

The complaint in the present case would seem plainly to import only a charge of discrimination and not one of unreasonable rate, and under the course of procedure above mentioned we do not feel called upon to pass upon the issue of reasonableness proposed in complainant's reply brief.

Under the head of discrimination between persons complainant's brief refers to evidence adduced to the following effect: Grain shipped from country elevators on the lines of the nonabsorbing defendant roads to industries in Chicago off the lines of these roads must pay not only the line charge but also a switching charge, which is not paid by elevators located on the absorbing lines. Grain purchased in the Chicago market is bought on the basis of track delivery Chicago, which means on the track of the inbound western road. The buyer, therefore, pays the switching charge necessary to make delivery to an elevator off the line of the inbound road. This charge, applicable only to grain coming from the nonabsorbing roads, frequently causes a difference in the price of this grain, it is alleged, to the extent of a quarter of a cent a bushel in the Chicago market—this, apparently, to reimburse the buyer for the switching charge which he must pay. In such a case there is a loss to the country dealer or farmer. At times the Chicago buyer pays the same price for grain coming from the nonabsorbing lines as he does for that off the other lines, in which instance he is subject to the loss of the switching charge unless it is subsequently refunded to him by the outbound roads. In this connection evidence was also adduced to the point that even where charges are refunded the dealer in Chicago is at a disadvantage in that, because of the delay in securing refund, he has tied up in switching charges awaiting refund a considerable amount of capital.

With respect to the loss of price alleged to be suffered by the country dealer or shipper, as well as the further averment that Chicago dealers in their purchases prefer other grain it may be said, as contended by defendants, that these averments would seem to involve an issue of discrimination between localities, that is, between the points located on the defendants' lines and the cross-country points located on lines of the other roads which absorb the switching, which issue, as indicated in the hearing, does not seem to be properly raised in this proceeding.

Considering the allegation of the loss suffered by the buyers in Chicago, it may be said, first, that the record is somewhat indefinite as to the exact extent of this injury. It was testified, as above indicated, that the payment of the switching charge in the case of grain

coming off the defendants' lines was reflected in the price paid for the grain, so that eventually this charge or loss went back to the country dealer or to the farmer, the Chicago buyer paying for the grain a price less the prevailing one by the amount of the switching charge. The ultimate disposition of this amount, namely, of the switching charge in the case of a refund by the eastern road when the grain goes out of Chicago is shrouded in some obscurity, but so far as can be judged from the record, it is not paid back to the dealer or farmer in the country. The conclusion would therefore seem to be inevitable that, to some degree at least, the prevailing situation might be a source of profit to the Chicago buyer who is originally indemnified for the amount of the switching charge which he has to pay in the lower price paid by him for the grain and is thereafter paid the charge by the eastern road which takes the grain out of Chicago. This condition, of course, does not obtain with respect to the grain which goes out by lake, in which case there is no absorption. The expense of this charge apparently now rests on the Chicago buyer. So far as this element of alleged injury together with the others suggested by the testimony summarized above do not come under the general charge of discrimination against grain and dealers in grain at Chicago as contrasted with other commodities and dealers in other commodities treated above, they would seem to be adduced in support of a further contention made by complainants that there is discrimination between the Chicago market and other competitive markets such as Peoria and Pekin, where, it is alleged, the defendant roads absorb the charges. With respect to this further charge of discrimination between localities we must reiterate what was said in the hearing with respect to this specific contention, namely, that such an issue is not before us.

There remains the charge of discrimination against millers in Chicago found, it is alleged, in the circumstance that while flour is delivered to Chicago industries at the line rate, which is the same as the wheat rate, and the switching charges on flour are absorbed, wheat brought to Chicago to be milled there is subject to payment of a switching charge in addition to the line rate. This, it is contended, results in prejudice to the Chicago miller in competition with millers at points outside of Chicago.

It developed in the hearing that the milling industry in Chicago is relatively small, there being but two mills, only one of which is represented in the complaint. The witness who appeared for this mill testified that about two-thirds of its wheat comes from the west and northwest and about one-third from Illinois and Indiana. It further appeared that on substantially all the wheat coming from the west and northwest switching charges are absorbed because of the

defendants' practice of absorbing on traffic competitive between them and other railroads. It also appeared that, whatever may be the cause—and from the record it is not clear—only about 20 per cent of the product of this mill was sold in Chicago. In the case of this small proportion of the mill's product the miller would have to defray the switching charge on the wheat brought in over defendants' lines if it did not come from competitive territory. In the case, however, of wheat milled in transit and the flour shipped out by the all-rail route the switching charges would be absorbed by the eastern roads. Under all the circumstances we are of opinion that the proof adduced on this phase of the complaint is not of a character to alter our conclusions on the general charge of discrimination indicated above.

In general we are of opinion for the reasons above indicated that the complainant has not established a case which warrants us in issuing such an order as is sought, namely, that the defendant carriers be required to absorb the switching charges of other roads in Chicago and make delivery to Chicago industries upon payment only of defendants' line charges. We desire to say, however, that we are fully sensible of the disadvantages to all parties concerned, both shippers and railroads, in the situation respecting switching charges at Chicago which obtained prior to the negotiations which resulted in the Lowrey tariff. No argument is necessary to demonstrate the need which existed of a remedy for this situation, and the makers of that arrangement are to be commended for the progress accomplished in the direction of the desired uniformity and simplicity. While we are disposed to do what we may to assist in the further effectuation of these objects sought in the plan, we are inclined to the opinion that the particular feature of the tariff here involved, namely, absorption of charges, and the problem presented by the unwillingness of these five roads defendant to subscribe to that feature with respect to grain are matters which might be more readily and satisfactorily adjusted through negotiation than by decision. The question in essence seems to be as to which of the carriers, inbound or outbound, participating in the movement of the grain through Chicago should assume the burden of absorption. Though we realize that in the record before us the development of this question has been to some extent *ex parte* and so incomplete in that the eastern carriers have not been before us to present their side of this question, we may say that we are left with the impression from what we have heard that an equitable solution would lie along the following lines. While under the existing general practice of absorption of switching charges instituted by the carriers serving Chicago the defendant roads may fairly be expected to absorb the charges on grain for local delivery—that is, on grain for which Chicago is the

final destination—the outbound rail carriers should continue their present practice of absorbing on grain taken by them from Chicago to destinations beyond. The reasons of a competitive nature which are alleged to have led to the institution of this practice by the outbound roads, in so far as that practice is confined in proper bounds, argue for the propriety of its maintenance. The switching charges on grain moving out by lake should not, we believe, be borne by the inbound rail line but should be the subject of arrangement in the charter agreement between the shipper and the boat. A solution along these lines or indeed any solution of the precise problem would seem to be difficult of achievement by the application of the principles invoked in the causes which ordinarily come to us upon complaint filed. We are sensible of the fact that negotiation so far has not proved effective. There seem, however, to be in the record and elsewhere indications of a disposition to come to agreement sufficient to induce the hope that agreement may yet be possible, and we trust that this will be accomplished by still further negotiation. This case will be held open for such further action as the Commission may deem proper.

29 I. C. C.

No. 6021.

CROWDUS BROTHERS ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted December 29, 1913. Decided February 3, 1914.

Upon complaint alleging that defendants' rates for the transportation of hides and pelts from points in Oklahoma to St. Louis, Mo., East St. Louis and Chicago, Ill., Milwaukee, Wis., and other points were and are unjust, unreasonable, and unduly prejudicial to complainants, *Held:*

1. That rates on hides and pelts from and to the points herein involved should not exceed the rates contemporaneously in effect on packing-house products.
2. That the rates complained of are and have been unjust, unreasonable, and unduly prejudicial from and since December 11, 1911, on which date our findings were promulgated in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160.
3. That complainants are entitled to an award of reparation on shipments made subsequent to the date named.

W. V. Hardie for complainants.

T. J. Norton and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

J. E. Johanson for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Chairman:

Complainants, Crowdus Brothers, a firm of which one J. C. Crowdus is principal owner, and the Oklahoma Hide Company, a corporation, are joint complainants herein with the Oklahoma Traffic Association, a voluntary organization representing the commercial interests of Oklahoma City, Okla., of which the first-named parties are members.

The complaint, filed August 11, 1913, contains the following material allegations: (1) That during the period from August 1, 1911, to April 1, 1913, defendants, in violation of sections 1, 2, and 3 of the act to regulate commerce imposed unjust, unreasonable, unjustly discriminatory, and unduly prejudicial rates and charges for the transportation of hides, pelts, and similar articles from Oklahoma City, El Reno, Guthrie, Tulsa, and McAlester, Okla., to St. Louis, Mo., East St. Louis and Chicago, Ill., Milwaukee, Wis., and other points in various states. That is to say, that the said rates and charges were unjust and unreasonable *per se* and relatively; that

they were unjustly discriminatory and unduly prejudicial when compared with defendant's rates on like traffic from Fort Worth, Tex., Wichita, Kans., and other points of origin to the same and other points of destination; (2) that the charging of a lower rate from Fort Worth than from Oklahoma City, which is alleged to be intermediate, was in violation of the fourth section of the act; (3) that during the period stated complainants made numerous shipments of hides, pelts, and similar articles from and to the points mentioned upon which they paid charges at the rates herein alleged to have been unjust, unreasonable, and unduly prejudicial, and that by the exaction of such rates they have been damaged and injured.

The prayer is for an order—

fixing reasonable rates and charges for the transportation of the traffic described * * *; removing the discrimination against the complainants; awarding damages in the amount of the difference between the charges paid upon the shipments, * * * and the charges which would accrue under rates put into effect by defendant carriers on April 2, 1913, in supplement 22 to F. A. Leland's I. C. C. 969, * * *, and such further orders as the Commission may deem necessary in the premises * * *.

A feature peculiar to this case is the seeming incongruity in the prayer for relief which seeks reparation upon basis of rates established April 2, 1913, and still in effect, although, as appears from the testimony and arguments in briefs, complainants are insisting that the latter rates are still not wholly fair and free from undue prejudice to traffic from the complaining points.

Substantially, as appears from the whole record, complainants seek the establishment of rates on hides and pelts not higher than those prescribed by us on packing-house products in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, and reparation based on the present rates which were established by defendants without a specific order of the Commission but in substantial conformity to the general adjustment of rates directed by us to be established on other commodities in the case cited. The matter of reparation is obviously the important issue from complainants' standpoint.

In our first report in the *Investigation of Alleged Unreasonable Rates on Meats*, *supra*, issued December 11, 1911, 22 I. C. C., 160, 174, we said in reference to the rates on hides:

Rates upon hides were also drawn in question, but it appears that the most acute ground of complaint has been already removed by a change in rates effective since this investigation was undertaken. To-day the only complaint seems to be directed against rates to lower Mississippi River crossings when for beyond. Without examining that matter in detail at this time, we assume that carriers will bring their tariffs upon this commodity into general harmony with the suggestions of the Commission.

The Commission now has before it, in what is known as the "Wool Investigation," Docket No. 4074, the general subject of rates on hides covering a considerable portion of the United States, and if satisfactory rates are not voluntarily established a suitable order will be made in either that proceeding or the present.

In a later report in the same proceedings issued May 13, 1912, 23 I. C. C., 656, respecting the same subject we said, at page 666:

Oklahoma City asks the Commission to prescribe rates on green salted hides and fertilizer and fertilizer material to certain points from Oklahoma City. This we are not prepared to do without some further investigation, and the subject will be retained to be disposed of in an additional report at a later day.

Rates on hides and pelts were, as indicated, involved in *In Re Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151. In our first report upon the general and comprehensive investigation made in that case, issued March 21, 1912, we said, at page 154:

The investigation embraced hides and pelts as well as wool, but the record with respect to these two commodities is not sufficiently full to enable us to intelligently dispose at this time of the questions arising in reference thereto.

Briefly, it may be stated, no decision has hitherto been reached in respect to the reasonableness of rates on hides and pelts from the territory involved to the eastern gateways and markets because the record in the cases cited has not been sufficiently complete to justify any finding.

Since the proceedings in the *Investigation of Alleged Unreasonable Rates on Meats, supra*, were instituted the rates on hides and pelts to St. Louis, Chicago, and Milwaukee from Oklahoma points and competing points in other states, in conformity with our suggestions, have been reduced and the relationship of the rates between the competing points thereby materially altered. There were two or more changes during the period covered but the former and present rates, in cents per 100 pounds, from some of the more important points of origin are indicated by the following table:

From—	Rates on hides and pelts in effect Dec. 1, 1911.		Present rates on hides and pelts effective Apr. 2, 1912.	
	To St. Louis.	To Chicago and Milwaukee.	To St. Louis.	To Chicago and Milwaukee.
Fort Worth, Tex.....	\$0.42	\$0.49	\$0.32½	\$0.39½
Dallas, Tex.....	41	48	32½	39½
Cleburne, Tex.....	46		32½	
Texas common points.....	46	53	(1)	(1)
Oklahoma City, Okla.....				
El Reno, Okla.....				
Guthrie, Okla.....	39	44	28½	36½
McAlester, Okla.....				
Tulsa, Okla.....				
Joplin, Mo.....	21	26	24½	26½
Topeka, Kans.....	25	30	23½	26½
Parsons, Kans.....	25	30	24½	26½
Coffeyville, Kans.....	24½	29½	(C)	(C)
Arkansas City, Kans.....	24½	29½	(C)	(C)
Wichita, Kans.....	24½	29½	(C)	(C)
Lincoln, Nebr.....	21½	23	(C)	26½
Kansas City, Mo.....	18½	20	(C)	22½
St. Joseph, Mo.....				
Atchison, Kans.....				
Omaha, Nebr.....	18½	23½	(1)	(1)

¹ Rates unchanged.

It is contended that the rates from Oklahoma points in effect prior to April 2, 1913, were unreasonable *per se* and relatively. The argument is made that the conditions of transportation from Kansas and Missouri River points, Oklahoma points, and the north Texas points, viewing them as segregated groups geographically, are not now and have not been in the past so dissimilar as to have justified the dissimilitude in rates which obtained during the period in question.

Numerous exhibits have been introduced which show a higher per-ton-mile return in the rates from Oklahoma points than is yielded by the rates from the competing Kansas and Missouri River points, which are nearer to the markets, or from the north Texas points, which are more remote from the markets. A comparison of the earlier rates and the per-ton-mile revenue via the short-line routes shows the following in respect to rates to St. Louis:

From—	Average rate per 100 pounds.	Average short-line distance.	Average revenue per ton-mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Texas common points.....	46	354	1.085
Fort Worth, Tex.....	43	678	1.239
Oklahoma points.....	39	518	1.589
Wichita, Kans.....	24½	457	1.672
Interior Kansas points.....	33	368	1.265
Missouri River points.....	17	328	1.651

More emphasis is laid, however, upon the alleged discriminatory character of the rates. It is contended that Oklahoma City, as a typical point, should not have been at such a disadvantage with Wichita, the principal competing point to the north, as appears from a comparison of the rates shown; or, in other words, that the spread of the rates between Wichita and Oklahoma City was too great, while, on the other hand, the spread of the rates between Oklahoma City and Fort Worth was not great enough and gave undue preference and advantage to the latter. The latter discrimination was augmented by a reduction in the rates from Fort Worth to St. Louis, which gave Fort Worth rates lower even than those from Oklahoma points during the period from December 2, 1911, to November 15, 1912. On the latter date rates from both Fort Worth and Oklahoma points to St. Louis were further reduced and the rate from Oklahoma City again fell somewhat below the Fort Worth rate. The situation during the period last stated is shown by the following table:

From—	Rates per 100 pounds.	Short-line distance.	Revenue per ton-mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Fort Worth, Tex.....	37½	678	1.089
Oklahoma points¹.....	39	518	1.589
Wichita.....	24½	457	1.672

¹ Average short-line distance and per ton-mile revenue.

The readjustment resulting from the reduction in the rates from Oklahoma points to St. Louis, which became effective November 15, 1912, and continued in effect until April 2, 1913, is shown by the following comparison:

From—	Rate per 100 pounds.
Fort Worth, Tex.....	Cents. 37½
Oklahoma points.....	33½
Wichita, Kans.....	24½

On the latter date carriers further reduced the rates from Fort Worth and Dallas, and from the principal Oklahoma points, to the basis indicated in the first table in this report. A statement of the rates contemporaneously in force during the several periods from Fort Worth, Oklahoma City, and Wichita to St. Louis is shown in condensed form in the following table:

	Single- line distance.	Rate per 100 pounds.	Revenue per ton-mile.
August 1, 1911, to December 1, 1911:	Miles.	Cents.	Cents.
From Fort Worth.....	720	42	1.166
From Oklahoma City.....	543	30	1.436
From Wichita.....	470	24½	1.022
December 2, 1911, to November 14, 1912:			
From Fort Worth.....	720	37½	1.034
From Oklahoma City.....	543	30	1.436
From Wichita.....	470	24½	1.022
November 15, 1912, to April 1, 1913:			
From Fort Worth.....	720	37½	1.034
From Oklahoma City.....	543	33½	1.224
From Wichita.....	470	24½	1.022
April 2, 1913, to present time:			
From Fort Worth.....	720	32½	.806
From Oklahoma City.....	543	28½	1.040
From Wichita.....	470	24½	1.022

As has been stated, complainants in the instant case contend that the present rates, while much more just and reasonable than those in effect prior to April 2, 1913, are still not entirely just to Oklahoma City as a typical Oklahoma point and do not give full recognition to the position of the latter city. Although the Oklahoma City rate is about half way between the Wichita and Fort Worth rates, complainants assert that the adjustment should conform to that fixed by us in the *Investigation of Alleged Unreasonable Rates on Meats, supra*.

The question of the relative adjustment of rates on packing-house products and fresh meats between these three originating points constituted an important issue in the case cited, and special attention was devoted to that question. At the time of the investigation the

rate on packing-house products to St. Louis was 24½ cents from Wichita; 28½ cents from Oklahoma City, and 32½ cents from Fort Worth. Comment was made in the report upon the fact that while the distance from Oklahoma City to St. Louis is but 64 miles greater than from Wichita to St. Louis, its rate increased by 4½ cents, while for an increase of 177 miles from Fort Worth to St. Louis over the distance from Oklahoma City to St. Louis, the rate increased but 4 cents.

We held that the rate from Oklahoma City to St. Louis should not exceed 27½ cents on packing-house products and, with reference to the adjustment as between the three rival points, we said, at page 171:

It is impossible for the Commission to prevent whatever discrimination may be found to exist by fixing a maximum rate or a maximum differential. In order to prescribe those rates or those differentials which will prevent discrimination for the future it is necessary to name the absolute rate or the absolute difference in the rates between these contending cities. So treating this question, we hold that the rate to St. Louis should be 3 cents per 100 pounds higher from Oklahoma City than that from Wichita upon packing-house products * * *, and that the rate upon packing-house products from Fort Worth should exceed that from Oklahoma City by 5½ cents.

Oklahoma City enjoys no offset to the higher rate charged therefrom as a concentrating point than is charged from Wichita and Fort Worth. The figures show that for an average haul of 211 miles from Kansas points into Kansas City the rate on hides and pelts is 12 cents as compared with 13.8 cents for a haul into Oklahoma City from points averaging 83 miles distant, and as compared with 11 cents to Fort Worth from points 85 miles distant. It also appears that the total cost of transporting hides from Kansas points to Chicago through Kansas City is 32 cents for an average distance of 694 miles; that the total transportation cost on hides from Oklahoma points to Kansas City, thence to Chicago, is 54 cents for a distance of 901 miles, as compared with a total transportation cost from the same points through Oklahoma City to Chicago of 57.8 cents for an average distance of 905 miles via the short line, and a total transportation cost from certain Texas common points through Fort Worth to Chicago of 55½ cents for an average distance of 1,094 miles.

It is argued that the rates on hides and pelts should be the same as on packing-house products. In the western classification, applicable in the absence of specific rates, throughout the territory involved, they are rated with packing-house products. In official classification territory green hides and pelts take fifth class, as do most packing-house product articles. The tariffs in effect provide, and for several years have provided, equal rates on hides and pelts and on packing-house products from Missouri River points to St. Louis and Chicago, and likewise equal rates from interior Kansas

points, such as Wichita, Arkansas City, Hutchinson, and Coffeyville, to Kansas City, St. Louis, and Chicago. Prior to the present adjustment hides and pelts from north Texas points have taken higher rates than packing-house products. To-day, by reason of the reduction of April 2, 1913, the rate on hides and pelts from the north Texas points is one-half cent lower than on packing-house products.

Hides and pelts, it appears from the record, no matter what the market or destination may be, are sold upon basis of a delivered price at Chicago. That is to say, regardless of the point to which these commodities are shipped, the shipper receives for his hides and pelts the Chicago price less the freight charges from point of shipment to Chicago.

The inherent characteristics of hides and pelts, many of which are matters of common knowledge, are not such as to justify any higher rate than on packing-house products. They load heavily. The loading in the instant case being apparently above 40,000 pounds on the average. The risk of loss or damage is comparatively slight; they can be loaded in any kind of box cars and no expedited service is required.

The points of origin have for some years been treated by defendants as a group from which they have applied uniform rates. There is no suggestion upon the record by either of the parties to the case that they should not continue to be so treated. Our findings in the *Investigation of Alleged Unreasonable Rates on Meats, supra*, was with respect to Oklahoma City's situation and the rates therefrom. Of these points only El Reno is more distant from St. Louis than Oklahoma City via the short line. In the instant case we have taken the latter point as typical of the entire group to which defendants have voluntarily accorded uniform rates and to which our findings and conclusions herein apply.

Upon consideration of all the facts and circumstances of record it is our conclusion, and we find, that the rates on hides and pelts from the Oklahoma points involved to St. Louis, Mo., East St. Louis, Ill., Chicago, Ill., Milwaukee, Wis., and points in the destination territory more particularly described in section 3 of the complaint herein, were and are, and for the future will be, unreasonable to the extent that they exceeded, or exceed, the rates contemporaneously in effect from the same points to the same destinations on packing-house products.

We find that the adjustment of rates on hides and pelts from Oklahoma City was and is unjustly discriminatory against Oklahoma City, and we hold that in adjusting the relationship of rates as between Oklahoma City and the competing points to the north and south of it the rate from Oklahoma City to St. Louis should be made 3 cents per 100 pounds higher than from Wichita, and that the rate

from Fort Worth should exceed that from Oklahoma City by 5½ cents per 100 pounds.

In our supplemental report dealing with claims for reparation on shipments of fresh meats and packing-house products in *Investigation of Alleged Unreasonable Rates on Meats*, 28 I. C. C., 332, we held that the rates found unreasonable and unlawful in that case were unreasonable and unlawful from and after December 11, 1911, the date on which our original report in that case was promulgated, and that complainants were entitled to reparation on shipments made subsequent thereto on which the unlawful rates were charged.

We are of the opinion, and find, that the rate on hides and pelts from the Oklahoma points involved to the points and the territory named and described in section 3 of the complaint were unjust, unreasonable, and unduly prejudicial to complainants from and after December 11, 1911, the date on which our findings were announced in respect to the rates on packing-house products. We also find that complainants have made numerous shipments since the last-named date on which they have paid charges at the rates herein found to have been unreasonable and unjustly discriminatory, and that they have been damaged by the exaction of such unlawful charges. Following the rationale of our supplemental report in *Investigation of Alleged Unreasonable Rates on Meats, supra*, and *Rates on Wool*, 25 I. C. C., 675, we further find that complainants are entitled to an award of reparation in the amount of the difference between the sums paid by them on such shipments and the amounts which would have accrued at the rates herein found to be reasonable, to wit, the rates on packing-house products from Oklahoma City as prescribed in *Investigation of Alleged Unreasonable Rates on Meats, supra*.

Statements have been filed in the record of the shipments made since August 1, 1911, but these have not been checked nor have the expense bills and other documentary evidences of the amounts paid been submitted. There is dispute as to who paid the charges on some of the shipments. Complainants should prepare statements of the shipments moving from and after December 11, 1911, and of the amount of reparation claimed thereon under our findings herein. Such statements, supported by the paid expense bills and other evidence establishing the rights of complainants to the award, should be submitted to defendants for auditing and verification, after which they should be forwarded to the Commission, duly certified by defendants' proper accounting officers, whereupon, if found correct, an order for the payment of the reparation will be issued.

An order will be entered at this time requiring the establishment and maintenance for the future of the rates herein found to be reasonable.

No. 5984.

WILLIAM F. GADOW

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Submitted September 24, 1913. Decided February 3, 1914.

Withdrawal by defendants of transit privilege on grain at Barton, Wis., pending complainant's refusal to permit inspection of his transit accounts at that point, found to have been in harmony with the tariff requirements, and not unreasonable or otherwise unlawful. Complaint dismissed.

George A. Schroeder for complainant.

R. H. Widdicombe for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in milling grain at Barton, Wis., a station on the Chicago & North Western Railway. By complaint, filed July 25, 1913, he alleges that unjust and unreasonable charges were collected for the transportation during the period December 6, 1912, to February 4, 1913, of 10 carloads of flour from Barton to Milwaukee, Wis., and 1 carload from the same point to Chicago, Ill. Reparation is asked.

The wheat from which the flour was milled originated at Minneapolis, Minn., and the freight charges collected were based on the rate to and from Barton, as follows: Minneapolis to Barton, 10 cents; Barton to Milwaukee, 5.5 cents; and Barton to Chicago, 8 cents per 100 pounds. There was in effect at the time a joint through rate of 10 cents per 100 pounds on grain from Minneapolis to both Milwaukee and Chicago. Under the joint rate defendants' tariffs permitted milling in transit at Barton, subject to the following regulations:

Transit privileges will be accorded only to shippers who will, when requested, make affidavit as to the accuracy of their records, keep a complete record in a manner acceptable to the carrier, and who will permit an agent of the carrier at all times to have access to their records, and to examine their accounts with other lines, and otherwise conform to the requirements of this circular.

Shipments from transit stations will be waybilled at the local rate from such transit stations in all cases where shippers fail or decline to comply with these rules.

Complainant owns and operates the only flour mill at Barton, and for a number of years availed himself of the transit privilege on wheat from Minneapolis. By reason of his refusal to allow inspection of his transit accounts, as provided in the regulations referred to, the privilege was withdrawn for about three months, covering December, 1912, and January and February, 1913, during which time he was required to pay the local rates from Barton to Milwaukee and Chicago in addition to the inbound rate from Minneapolis. No question is raised as to the reasonableness of the local rates to and from Barton. The sole question is whether defendants were justified in the withdrawal of the transit privilege during the period covered by complainant's refusal to permit inspection of his transit accounts.

Complainant testified that a representative of the western weighing and inspection bureau requested permission to verify the daily reports of transit grain he had furnished the local agent at Barton, and that he declined to permit such inspection for the reason that he considered the books his private property, and preferred to do business with the local agent. He further testified that the preparation of the daily reports referred to seriously interfered with the more important duties of his bookkeeper, and he concluded that if he could secure a flat rate of 7.5 cents on grain from Minneapolis to Barton he "would not bother with the transit at all." He did not secure a reduction of the rate from Minneapolis, and subsequently permitted an examination of his books and accounts to be made. Thereupon the transit privilege was restored.

The defendants are members of the western weighing and inspection bureau. They showed that a representative of the bureau twice called upon complainant and clearly explained the necessity of checking the daily reports with his books; and that in view of complainant's persistent refusal to permit the necessary examination, the only course that could be lawfully taken in harmony with the tariff requirements was to withdraw the transit privilege, which was done.

It is the duty of shippers to aid carriers in their efforts properly and effectually to police transit privileges, and it does not appear that the tariff requirements in this case, which were published with that end in view, are unreasonable or otherwise unlawful. Upon the facts of record we are of opinion and find that defendants acted within their lawful rights in the withdrawal of the transit privilege for the time and under the circumstances stated. It follows that the complaint must be dismissed, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 238.
KANSAS-CALIFORNIA FLOUR RATES.

Submitted January 8, 1914. Decided February 9, 1914.

To California terminals from Hutchinson, Kans., using Hutchinson as a typical point in the territory of origin involved in this proceeding, the present rate on wheat in carloads is 58 cents and on flour in carloads 65 cents. It is proposed by the tariffs under suspension herein to increase the flour rate to 75 cents. Proposed advance found to be not justified and suspended tariffs directed to be canceled.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

Warren Olney, jr., Alexander R. Baldwin, and Allan P. Matthew for Western Pacific Railway Company and Denver & Rio Grande Railroad Company.

George D. Squires for Southern Pacific Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

A. E. Helm for Public Utilities Commission of the state of Kansas.

Thomas L. Hall for Nebraska State Railway Commission.

H. G. Wilson for Kansas City Millers' Club.

Seth Mann and William R. Wheeler for Traffic Bureau of San Francisco Chamber of Commerce.

F. P. Gregson for Traffic Bureau, Associated Jobbers of Los Angeles.

G. J. Bradley for Merchants & Manufacturers' Association of Sacramento, Cal.

Frank M. Hill for Fresno Traffic Association.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In this proceeding the carriers propose to increase the rate on flour in carloads from Kansas, Nebraska, and Oklahoma to California terminals, including San Francisco and Los Angeles, from 65 to 75 cents per 100 pounds. The wheat-producing area of these states principally involved is the group west of a line drawn north and south through Emporia, Kans., which will be taken as representative for the purpose of this report. The rates on wheat and flour to the terminals are blanketed over this group. The present rate on wheat of 58 cents from this group to the terminals it is proposed to leave as at present. By this increase on flour the difference or spread be-

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tween the rate on wheat and flour will therefore be widened from 7 to 17 cents.

The milling interests of California terminal points have intervened in favor of the increase, and were heard in testimony and argument.

Prior to 1904 the rate on wheat from Kansas to California terminals was 50 cents and on flour 75 cents. In that year the wheat rate was increased to 55 cents and the flour rate reduced to 65 cents. In 1907 the wheat rate was further increased to 58 cents, the flour rate remaining unchanged. The spread between these commodities has therefore been steadily reduced since 1900 from 25 cents to 7 cents. The latter difference is that prescribed as a maximum spread between the rate on wheat and flour by the Commission in the case of *Howard Mills Co. v. M. P. Ry. Co.*, 12 I. C. C., 258, decided in 1907, the increase in the wheat rate from 55 to 58 cents in that year, referred to, having been made by the carriers in conformity with the requirements of that decision. The protestants herein therefore rely largely on the finding in that case. The respondent carriers contend, however, that that case is not determinative of the issues involved in the present proceeding, as the question of milling in transit, which is available and of substantial benefit to the Kansas millers, although mentioned in the report, was not considered as a factor upon which the decision in that case rests, whereas in the present record the milling-in-transit feature of this traffic is fully developed and is shown in itself largely to warrant the increase in the spread between the rates on wheat and flour.

Under the milling-in-transit rates and practices now applicable under the respondent carriers' tariffs to this traffic wheat may be shipped from any point in this group to the Kansas mill, there ground into flour, and the product forwarded to California terminals at the rate applicable on flour from the point of origin of the wheat, namely, 65 cents, which, as stated, is blanketed over the entire group. In connection, too, with such a shipment as that just described the inbound rate from the point of origin of the wheat to the Kansas mill is refunded to the Kansas miller in the final settlement between him and the carriers to an amount as high in some cases as 14 cents per 100 pounds. In addition, further, the Kansas miller is given the benefit of a reconsignment or diversion privilege upon his shipment of flour upon its arrival at the California terminal without extra charge. For example, on a carload of wheat shipped from a given point in this group to Hutchinson, there ground into flour, and the product forwarded to San Francisco, thence diverted to San Diego, the total charge would be this blanket rate of 65 cents.

On wheat drawn from this Kansas group and shipped to California terminals the milling-in-transit privilege is not applicable

at the terminal, which requires the California miller to pay the local rate of 58 cents on his grain plus the outbound local rate on the flour, usually of 10 cents to points in California, where most of the California-ground product is distributed. The California miller does, however, have the benefit of the diversion and milling privilege at points intermediate to California and this group, within the grain-producing area, the same as does the Kansas miller, and may either mill the grain or elevate it at the Kansas point; but, as pointed out in the record, the privilege is of no practical benefit to the California miller, inasmuch as his grain is usually moved direct to the terminal point.

The carriers further contend that the present rate on flour is too low in and of itself, without regard to the rate on wheat, having been originally established to meet the rail-and-water rates of carriers principally from the Dakotas and Minnesota of 65 cents to San Francisco, 70 cents to Los Angeles, and 75 cents to other points in California. They now state that this competition has been overestimated by them, and that it is their belief that an increase in the rate on flour from Kansas will not result in any material reduction in the volume of that traffic that has heretofore been tendered to them from that state. They point also to the fact that the rate on flour from Minnesota and the Dakotas is 75 cents, all rail; that flour moves from these states in substantial volume under this rate; and that they see no reason why the same commodity should not move in normal volume as well from Kansas at the same rate.

The carriers also present evidence and argument in support of the proposed rate from a transportation standpoint. Exhibits prepared by the Western Pacific show that the average loading of wheat is 68,969 pounds and of flour 52,888 pounds, with average car-load revenues of \$400.02 and \$342.79, respectively, although the value of wheat in California is \$36 per ton and of flour \$50 per ton, and although the service rendered in connection with the transportation of flour is, considering the milling-in-transit and diversion privilege actually practiced with respect to the Kansas-ground flour, much greater than on wheat. It takes, roughly, 273 pounds of wheat to make 196 pounds of flour. Outbound from his mill, the Kansas miller therefore pays freight on only 196 pounds of flour, whereas the California miller is required to transport the full 273 pounds of wheat, which includes the bran and shorts. Reduced to barrels, the total transportation charge paid by the Kansas miller is 32 cents lower than that paid by the California miller; and, taking into account the relative prices received for the bran and shorts at Kansas City and the California terminals, respectively, the price being usually higher on the coast, the net difference in favor of the Kansas miller is said to be about 18 cents.

It was shown that the production of wheat in California has fallen off very considerably in recent years, and is not nearly equal to the demand of the California millers. The output of flour in California has likewise materially decreased. The production of both wheat and flour in Kansas has materially increased during the same period. Such wheat as is grown in California must be blended with hard wheat, which must as a practical matter be drawn from Kansas. Other transportation characteristics, such as "red ball" expedited service, damage claims, etc., all said to impose greater service or risk on the flour traffic over wheat, are also referred to in varying detail by the carriers and interveners.

With respect to the milling-in-transit feature of the transportation of this wheat and flour traffic we said in the *Howard Mills case*, at pages 264 and 265:

It was claimed by the intervener in argument that the milling-in-transit privilege enjoyed by the Kansas miller was an important advantage which the California miller did not possess and which should be equalized in determining the amount of this differential. Neither the tariffs nor the testimony make this matter very clear. It is admitted that the Kansas miller can take the wheat from the country, grind it at his mill, and ship the flour to certain California points for 65 cents per 100 pounds, from the country station to final destination of the flour; that is, 65 cents covers the entire movement. If now, the California miller, who is said to enjoy no milling-in-transit privilege, is obliged to ship the wheat to his mill at 55 cents per 100 pounds, and then pay a local rate from the mill to the point of consumption, it is evident that in this is found, or may be found, an important advantage in favor of the Kansas miller.

There is nothing in this record to indicate the extent to which the Kansas miller benefits, if at all, by this circumstance; nor ought we to attempt to equalize this advantage by giving to the California miller an additional advantage in the differential. If, in point of fact, this amounts to a discrimination against the California industry, the discrimination itself should be removed. This wheat and flour is transported by a joint line under a joint rate from Kansas to the final destination in California. Whatever privilege is permitted upon one part of that route should be apparently permitted upon all of it. However, upon this point we express no opinion, simply calling attention to the fact that in establishing the above differential no account has been taken of the fact that the Kansas miller enjoys a milling-in-transit privilege which is not accorded to his rival upon the Pacific coast.

Additional testimony has been presented on this phase of the question before us, as stated by the respondents and interveners, with the result already referred to, that the Kansas miller does have a substantial advantage over the California miller upon the whole transaction of getting the wheat from the growing point, through the mill, to the ultimate consuming point, in the form of flour. This seems, however, to be largely, if not wholly, but the result of a natural advantage, due to the better location of the Kansas miller with respect to the origin of the wheat. It can hardly be held that the California miller should have this natural disadvantage under which he operates

by reason of being located at a terminal rather than at an intermediate point removed by an increase in the terminal rate on flour. As we stated in the *Howard Mills case, supra*, we ought not "to attempt to equalize this advantage [to the Kansas miller] by giving to the California miller an additional advantage in the differential."

Even under the proposed increased rate on flour to the terminals the California millers would, it seems, still labor under some disadvantage in comparison with the Kansas miller. This is not an unlikely result under the circumstances here appearing. Naturally, under the very theory of transit, to benefit by it or to break even with one's competitors, one must be located somewhere between the point of origin of the wheat and final destination of the product. When the terminal distributing point under the transit rate is reached transit benefits to the miller located there cease also.

Considering the whole record, not only with respect to the milling-in-transit situation as more fully developed, but also in all its other aspects, we conclude that the carriers have not sustained the burden of proof placed upon them by the statute with respect to the proposed rates, and they will therefore be required to cancel the tariffs under suspension.

An order will be entered accordingly.

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No. 8410.
SWIFT & COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 15, 1912. Decided February 2, 1914.

1. Defendants' rates on coarse salt in bulk from Cuylerville, N. Y., to Chicago Junction, Ohio, found unreasonable to the extent that it exceeded 78 per cent of the New York-Chicago rate on that commodity, and the lower rate basis prescribed for the future.
2. Present through route for coarse salt in bulk from Cuylerville to Chicago Junction through Akron, Ohio, required to be maintained and a joint rate in connection therewith not exceeding 11 cents per 100 pounds to be established. Reparation awarded.
3. Based on prior decisions of the Commission, reparation disallowed on salt shipments from Cuylerville to Port Huron and Delray, Mich.

Albert H. and Henry Veeder and Maurice Weigle for complainant.
John B. Daish for C. S. Hyman & Company and other interveners.
Henry Wolf Bickel for Pennsylvania Railroad Company and Cleveland, Akron & Columbus Railway Company.

W. C. Coleman for Baltimore & Ohio Railroad Company.

Walter E. McCornack for Detroit Salt Company, intervener.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant in this proceeding conducts a refrigeration or icing service for the Baltimore & Ohio at Chicago Junction, in the state of Ohio, for the Grand Trunk at Port Huron, in the state of Michigan, and for the Wabash at Delray, near Detroit, also in the state of Michigan. In the course of its work it uses large quantities of coarse salt, which it receives from mines on the line of the Pennsylvania Railroad at Cuylerville, in the state of New York. Three complaints have been filed in its behalf alleging that the rates on this commodity to the destinations named are unjust, unreasonable, and unjustly discriminatory; and reparation is claimed to the extent that the aggregate charges collected exceeded charges that would have been reasonable, just, and nondiscriminatory. The complaint against the Pennsylvania lines, the Cleveland, Akron & Columbus, and the Baltimore & Ohio, involving shipments to Chicago Junction, was filed as the original complaint; the complaint against the Pennsylvania and the Grand Trunk, involving shipments to Port Huron, was filed as the first amendment; and the complaint

against the Pennsylvania and the Wabash, involving shipments to Delray, was filed as the second amendment. In addition to attacking the reasonableness of the rates exacted on its traffic, the complainant also seeks the establishment of a through route from Cuylerville through Akron to Chicago Junction, by way of the Pennsylvania and the Baltimore & Ohio, and a reasonable joint through rate as the maximum to be charged for such transportation.

The principal issues involved on the record have been considered heretofore in *Delray Salt Co. v. P. R. R. Co.*, 18 I. C. C., 259; *International Salt Co. v. G. & W. R. R. Co.*, 20 I. C. C., 530; *International Salt Co. v. P. R. R. Co.*, 20 I. C. C., 539; and *Gotttron Bros. Co. v. G. & W. R. R. Co.*, 28 I. C. C., 38. The rates on salt from the producing districts of New York to Chicago and other points in central freight association territory were discussed in detail in those cases and need not be considered at length here. Briefly stated, salt in carloads, n. o. s., moves to Chicago from Cuylerville and other near-by salt-producing points under a commodity rate of 14 cents per 100 pounds. This rate is ordinarily scaled to intermediate points under the regular percentage basis used in fixing rates in the so-called percentage-basis territory. There is also in effect to Chicago a special rate of 10 cents per 100 pounds applying on coarse salt in bulk. This rate is not scaled to percentage-basis points.

The complaints now before us are based on our decision in *Delray Salt Co. v. P. R. R. Co.*, *supra*, wherein we held that, inasmuch as the rate on evaporated salt from Cuylerville to Chicago had been scaled on the percentage basis to Detroit, there was no reason, so far as the record disclosed, why the rate on rock salt should not also be scaled to Detroit under the same system. Under the percentage system, Chicago Junction, Port Huron, Delray, and Detroit all take 78 per cent of the New York-Chicago rates; and complainant contends, therefore, that a reasonable rate to Chicago Junction, Port Huron, and Delray would not exceed 78 per cent of the special commodity rate of 10 cents applying on coarse salt in bulk from the New York fields to Chicago.

Chicago Junction is an interior point on the line of the Baltimore & Ohio, 76 and a fraction miles west of Akron. The salt used there by complainant was shipped from Cuylerville under through bills of lading issued by the Pennsylvania, and was routed by way of the Pennsylvania lines, the Cleveland, Akron & Columbus, and the Baltimore & Ohio, through Akron. The Pennsylvania has no joint rates with the Baltimore & Ohio on traffic moving into this territory, and the charges were based on a joint through rate of 10 cents to Akron, plus the Baltimore & Ohio local of 5 cents, later 5½ cents, to destination. The distance by way of this route was 411 miles.

There were two other routes available to complainant, viz, the Pennsylvania and Erie to Mansfield and Baltimore & Ohio to destination, with a rate of 13 cents, the distance being 430 miles; or the Pennsylvania and Lake Shore to Shelby and the Baltimore & Ohio to destination, with a rate of 14½ cents, the distance being 374 miles. Although the route by way of Akron is not the shortest, it is claimed that it is the most direct and that the service is better, the time consumed in transit being materially less. At the time these shipments moved there was in effect a joint rate of 11 cents from Retsof to Chicago Junction, applying by way of the Genesee & Wyoming, Erie, and Baltimore & Ohio. Retsof and Cuylerville are within a few miles of each other and ordinarily take the same rates.

The contention of complainant that it is entitled to a rate of 7.8 cents to Chicago Junction, based on 78 per cent of the special 10-cent rate to Chicago, has been disposed of in *International Salt Co. v. G. & W. R. R. Co.*, *supra*, wherein we found that the low rate to Chicago was compelled by competitive conditions that do not exist at intermediate points and for that reason the carriers were justified in not scaling that rate back, under the percentage system, when fixing rates to those points. When the question was before us in *Gottron Bros. Co. v. G. & W. R. R. Co.*, *supra*, we found that the normal rate of 14 cents to Chicago, when scaled back under the percentage system to points in central freight association territory, does not result in discriminatory rates or in rates that are unreasonable. We see no compelling reasons on the record before us which lead us to modify our views on that question; and we therefore conclude and find that the rate assessed by defendant carriers concerned in the transportation of the complainant's salt in bulk from Cuylerville to Chicago Junction was unreasonable to the extent that it exceeded 78 per cent of the 14-cent rate on that commodity to Chicago, or 11 cents per 100 pounds; and that the rate for the future to that destination ought not to exceed that percentage of the normal Chicago rate.

As heretofore stated, the complainant also seeks the establishment of a through route to Chicago Junction by way of Akron, alleging that no such through route exists. As a matter of fact, however, a through route was created when the through bills of lading issued by the Pennsylvania on the salt shipments of the complainant were recognized by the other carriers participating in the transportation. In *In the Matter of Through Routes and Through Rates*, 12 I. C. C., 163, 167, we said:

Therefore it is settled that, whatever other facts or incidents of a shipment may serve to prove the existence of a through route, a through bill of lading is, as to carriers recognizing it, conclusive evidence of the existence of such through route.

The carriers, having thus created the through route requested by complainant, must continue its operation, with a joint rate in connection therewith not to exceed 11 cents per 100 pounds. Upon the record we also find that complainant has received certain shipments of coarse salt at Chicago Junction and that the freight charges paid thereon by the shipper, the Sterling Salt Company, were paid for and on behalf of complainant and at a rate herein found unreasonable. The complainant has therefore been damaged to the extent of the difference between the amount so paid and the amount which would have been paid at the rate herein found reasonable, and it is therefore entitled to an award of damages. Upon submitting its statement covering shipments not barred by the statute and duly checked by the carriers, it will be carefully examined and an order will be entered awarding the amount of damages shown to have been suffered by the complainant on account of the rate herein found to have been unreasonable.

The situation at Port Huron, involved in the first amendment to the original complaint, differs but little from that at Chicago Junction; and our findings in the cases cited respecting the rates on salt to this territory are applicable to both places alike. Port Huron is on the Grand Trunk Railway between Buffalo and Chicago and is also on the route traversed by water carriers plying between Buffalo and the western lake ports. A small movement of coarse salt in bulk to intermediate points may have existed at one time by way of the lake route, but this has now practically been absorbed by the rail carriers. For that reason the lake route may be considered as not existing, in so far as the public carriage of this traffic to intermediate points is concerned. So far as salt is concerned Port Huron at this time has no advantage in location over Chicago Junction, and it should therefore have no advantage in rates by reason of its position on the lakes. The salt shipped to the complainant at Port Huron was routed by way of the Pennsylvania and the Grand Trunk and moved under a joint through rate of 11 cents per 100 pounds. This is the rate which we have found reasonable in *Gotttron Bros. Co. v. G. & W. R. R. Co.*, *supra*, and is the rate which we have herein found was a reasonable rate to have been applied on shipments destined to Chicago Junction.

It should be borne in mind that the complainant is a consumer of salt at Port Huron and is not operating under the disadvantage of competing as a dealer in markets beyond that place, which was the situation confronting the Delray Salt Company in the case to which the complainant refers. Furthermore, discrimination in this case is lacking, as the complainant paid the same rate to Port Huron from the New York fields as was paid by other consumers or dealers

at the same place. From the testimony of record we are forced to the conclusion that the rate complained of was reasonable for the transportation performed. The complaint in respect to the rate to Port Huron is consequently without merit and must be dismissed.

In its second amendment to the original complaint, the complainant attacks as unreasonable and unlawful a rate of 11 cents assessed on shipments consigned to it at Delray and routed by way of the Pennsylvania and the Wabash. Delray is the name of a railroad station within the city of Detroit. Our decision in *Delray Salt Co. v. P. R. R. Co.*, *supra*, is urged as a precedent, and complainant demands reparation to the basis of the rate of 7.8 cents on about 78 carloads moving between Cuylerville and Delray during the period from July, 1908, to May, 1910, when the 11-cent rate was in effect. Upon our findings in that case, the carriers then defendant—the Pennsylvania and the Michigan Central—were accorded the option of either increasing their rate to Chicago and leaving the rate to Detroit unchanged or of continuing to maintain the rate to Chicago and reducing the rate to Detroit. They preferred to accept the latter alternative. Those carriers therefore put in effect a rate of 7.8 cents. The Wabash, not wishing to engage in the traffic on that basis, and not being a party to the complaint, continued its rate of 11 cents, which is now in effect over all lines.

The situation is similar, so far as the reparation claim is concerned, to that dealt with in *International Salt Co. v. P. R. R. Co.*, 20 I. C. C., 539. The complainant in that case was a consumer of salt at Detroit, and, basing its complaint on the decision in *Delray Salt Co. v. P. R. R. Co.*, *supra*, demanded reparation on its shipments of coarse salt to Detroit while the 11-cent rate was in effect. The complaint was dismissed and reparation denied on the ground that the complainant had not shown that it was damaged. Discrimination was the basis of our award of reparation in the latter case, and referring to this feature in the case we said in *International Salt Co. v. P. R. R. Co.*, *supra*, at page 541:

As the Delray company was not doing business at Cuylerville but at Detroit, it was damaged by the 11-cent rate to Detroit, for it had to use that rate in its competition in the markets beyond Detroit reached by this complainant under a 10-cent rate to Chicago. We therefore held that the 11-cent rate from Cuylerville to Detroit was discriminatory when compared with the 10-cent rate from Cuylerville to Chicago. But the complainant in this proceeding was the shipper that was shown in that case to be getting the benefit of the 10-cent rate to Chicago, and was the competitor complained of by the Delray Salt Company. The particular element of damage there shown is therefore altogether lacking in this proceeding.

We find the same situation to exist in the case now before us upon the second amendment. The complainant is a consumer of salt in

as well as in Delray and has received an immense tonnage of Chicago under the 10-cent rate.

We have already called attention to the fact that the rate of 10 cents in effect to Chicago is the result of competition of the rail-and-lake lines, and furnishes no standard by which to compare rates not affected by similar conditions; and the record clearly shows that the lake route now offers no active competition to intermediate points with respect to this traffic. Our conclusions in *International Salt Co. v. P. R. R. Co.*, 20 I. C. C., 539, control the issues raised in the second amendment to the complaint and it must therefore be dismissed.

Orders will be entered in accordance with these findings.

No. 4765.

BOTSFORD & BARRETT

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted December 14, 1912. Decided January 12, 1914.

Defendant's charge of 4 cents per 100 pounds for switching grain in carloads at Bellefonte, Pa., found unreasonable to the extent that it exceeded \$5 per car. Reparation awarded.

James Hunter Duthie for complainants.

Henry Wolf Biklé for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Henry E. Botsford and Clair H. Barrett are partners engaged in business at Detroit, Mich. By complaint, filed March 25, 1912, they allege that the defendant collected unreasonable and discriminatory charges for the switching at Bellefonte, Pa., of two carloads of wheat, one of which originated at Dryden, Mich., the other at New Hudson, Mich. Reparation is asked.

20 I. C. C.

The cars, which were shipped in October, 1911, moved via the Grand Trunk Railway, New York Central lines, and the Central Railroad of Pennsylvania. The plant of the consignee, Gamble, Gheen & Company, is located on the tracks of the Pennsylvania Railroad, and that company charged for the transportation from the point of interchange with the Central Railroad of Pennsylvania to said plant, a distance of approximately one mile, a rate of 4 cents per 100 pounds, or \$24 per car. This amount, originally paid by the consignee, was subsequently charged back to and paid by complainants. There is also a demand for refund of demurrage charges in the amount of \$5 per car; but it is shown that these charges accrued pending efforts to induce the carriers to accept less than their tariff rates. There is nothing in the record to show that the demurrage charges were unreasonable or otherwise in violation of the law.

The Central Railroad of Pennsylvania has 28 miles of line extending from Mill Hall, Pa., where it connects with the New York Central lines and the Pennsylvania Railroad, to Bellefonte, where it connects with the Pennsylvania Railroad. It originates considerable local intrastate traffic for deliveries on the Pennsylvania Railroad at Bellefonte, on which the latter charges \$5 per car switching. This charge, however, is one which is only applied to or from industries on the Pennsylvania Railroad and Central Railroad of Pennsylvania on traffic which has origin at or is intended for delivery at strictly local points on said lines.

State traffic originating at or intended for delivery at points beyond the lines of the carriers named, when switched at Bellefonte, is subject to the general scale of class rates the same as interstate traffic, and this scale is the basis applied at various points on the Pennsylvania system. In the case of the shipments here in controversy the sixth-class rate charged was the lowest class rate in effect in tariffs of defendant or the minimum charge for a movement between two given points on its lines.

In placing its orders with Botsford & Barrett, the consignee, Gamble, Gheen & Company, called for Pennsylvania delivery, but the former, in ordering the cars from the shippers, gave no routing instructions with respect to delivery. The car from Dryden was routed by the initial carrier, the Grand Trunk Railway, via the New York Central; and the shipper at New Hudson directed routing of the car from that point via "N. Y. C." Had the cars been forwarded by the Grand Trunk Railway Company via Buffalo and the Pennsylvania Railroad they would have moved on the same joint through rate as that in effect via the routes employed, without the addition of any switching or other charge for delivery. There is no allegation that the cars were misrouted and no evidence was

submitted showing that the initial carrier was informed of the requirement for Pennsylvania Railroad delivery.

In brief and on argument counsel for defendant places much stress upon the consignee's orders to complainants and the availability of a Pennsylvania Railroad route which would have obviated the payment of switching charges, contending that the case at bar arises solely from the complainants' desire to recover charges which accrued through their failure to observe consignee's instructions as to delivery. We think, however, that it is immaterial what requests or instructions were placed by the consignee with intermediary parties.

Defendant further maintains that it was first to enter Bellefonte and to establish terminals there; that it has expended large sums of money in constructing and maintaining its terminals, now having approximately three deliveries to one of the Central Railroad of Pennsylvania; and that as it maintains joint through rates from practically all territories to Bellefonte, it should not be called upon to throw open its facilities to its competitors for a mere switching charge.

The Central Railroad of Pennsylvania charges at Bellefonte \$2 per car for switching pig iron, mill cinders, iron ore, and coke from the Pennsylvania Railroad junction to the Bellefonte Furnace Company's siding; and on all other carload traffic applies its class scale, which is somewhat higher than that of the Pennsylvania Railroad. At Philadelphia, Harrisburg, Pittsburgh, and points of similar importance and size, the Pennsylvania Railroad has no per-car switching rates for traffic interchanged with connections, but applies its class scale hereinbefore mentioned. At other points in Pennsylvania, such as Falls Creek, State Line, and Clearfield, for special reasons growing out of local conditions, there are per-car switching charges of from \$1 to \$5. The announced policy of the defendant is to avoid so-called nominal per-car switching charges on traffic from connections except where there is a tonnage compensation, and the connecting carrier gives the Pennsylvania Railroad the advantage of terminals as valuable as its own—that is to say, it attempts for the protection of its terminals to make such charges as will insure the routing of traffic to give it line hauls; and the defense here rests largely upon adherence to this policy, which is maintained to be proper and lawful. Counsel for defendant further argues that to reduce the switching charge at Bellefonte to such an amount as would permit its absorption by competitors would mean the surrender to other lines of much competitive traffic on which it, in consequence, would receive only a terminal haul and nominal earnings, and, virtually, the establishment of new through routes.

It is to be observed, however, that the defendant did open its terminals in Bellefonte to the delivery of the cars in question. The

charge for the service it rendered was \$24 per car for a haul of less than a mile. The evidence shows that there were no heavy grades or other expensive transportation conditions connected with the service. The question upon this record is whether the charges collected of complainant were reasonable for the service performed. We are of the opinion that they were not. The charge was plainly excessive, and admitted to be so by counsel for the defendant, if it was to be considered as a movement by itself.

We are therefore of the opinion that the charges collected of complainant were unreasonable to the extent that they exceeded \$5 per car. We further find that complainants made the shipments in accordance with the above statement of facts and paid charges thereon at the rate herein found to be unreasonable and unjustly discriminatory; that complainants have been damaged to the extent of the difference between the amount that was paid and the amount that they would have paid at the rate above found reasonable; and that they are, therefore, entitled to an award of reparation from the Pennsylvania Railroad Company in the sum of \$38, with interest from October 31, 1911.

The Commission has recently considered the real question here presented; that is, the right of a carrier to protect its terminals against its competitor, in *Waverly Oil Works Co. v. P. R. R. Co.*, 28 I. C. C., 621, and *Buffalo, Rochester & Pittsburgh Ry. Co. v. Pennsylvania Co.*, 29 I. C. C., 114. It is possible that this defendant may desire to recast its tariffs at this point in accordance with those decisions, and therefore no order for the future will be made at this time.

Complainants' counsel, relying upon section 8 of the act, asked for an award of damages to cover counsel fees and costs; but this Commission is without authority to award counsel fees or costs in reparation cases, this power being limited under the section to actions in court. An order for reparation will be entered.

29 I. C. C.

No. 6043.

GREEN BROTHERS BOX & LUMBER COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY.

Submitted December 28, 1913. Decided February 3, 1914.

Rate of 13 cents per 100 pounds for the transportation of lumber trimmings in carloads from Odanah, Wis., to Rockford, Ill., found to have been unreasonable to the extent that it exceeded 10.5 cents. Reparation awarded.

C. S. Bather for complainant.

C. C. Wright and *Robert H. Widdicombe* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of wooden boxes, etc., at Rockford, Ill. By complaint, filed August 7, 1913, it alleged that the rate charged by the defendant for the transportation of certain shipments of lumber trimmings from Odanah, Wis., to Rockford, Ill., was unreasonable and unjustly discriminatory. Reparation is asked.

The shipments referred to in the complaint moved during the period between October, 1912, and August, 1913, and were described by the consigner as "trimmings" or "trims." There was no specific rate on lumber trimmings. At destination the shipments were inspected by defendant's agent, and the lumber rates were applied. Charges were collected thereon in the sum of \$1,084.04, based upon a weight of 833,800 pounds and the lumber rate of 13 cents. Defendant maintains two rates on fuel wood from and to the points in question, namely, 7 cents, with minimum weights ranging from 40,000 to 60,000 pounds, according to the length of the car; and 9 cents with minima varying from 24,000 to 36,000 pounds, according to the length of the car. It is the contention of complainant that lumber trimmings are more nearly analogous to fuel wood than to lumber, and that the charges on the shipments in question should not have exceeded the charges that would have accrued at the fuel-wood rates.

According to complainant's witness the commodity shipped is known to the trade as "lumber trimmings." It is mill material and consists of "droppings" from boards as they come from the saws.

The pieces are of various shapes and sizes and range in length from 12 to 47 inches, averaging 18 or 20 inches. While some of the pieces are of fairly good grade, some of the others are split, some have the bark or wane on one side, and some have jagged edges. After unloading, the wood is sorted and graded by complainant and the suitable pieces manufactured into box shooks and crating. About 60 per cent of the commodity in question is valuable for such manufacture, but the remaining 40 per cent is sold or used for fuel, and has no other commercial value. Until a few years ago lumber trimmings were cut into short lengths and sold for fuel. Recently, owing to the increased price of long-length lumber, a market for this commodity has developed with box and crate manufacturers. The price seems to vary considerably. The evidence shows that complainant recently paid \$4 per ton at Rockford for trimmings. Invoices filed of record, however, covering 16 of the 20 cars involved in this case, show that the price paid was \$9 per 2,500 pounds. Generally speaking, it costs about half as much as the long-length lumber which would otherwise be used for the manufacture of shooks and crating.

One of the defendant's witnesses, who is a Wisconsin lumber manufacturer, testified that the lowest grade of lumber sold by him was similar to certain samples exhibited at the hearing by defendant, which had been taken from shipments consigned to complainant; that such material was sold by him as short box lumber at about \$10 per 2,300 feet, and shipped at lumber rates. Complainant's witness claimed that the pieces exhibited by defendant were not fair samples, and testified that under the rules of the lumber trade any pieces less than 48 inches in length are not graded as lumber.

Defendant objects to applying the fuel-wood rates on lumber trimmings, for the reason that they are regarded as extremely low, having been made so in order to enable farmers to readily dispose of the product after clearing their farms. Fuel wood has no other commercial value, and sells for about \$1.50 or \$2 per cord. A cord weighs about 2,400 pounds.

Complainant's witness testified that within the state of Wisconsin the fuel-wood rates are applied on lumber trimmings; that other manufacturers are located at Milwaukee, Eau Claire, Wausau, Stevens Point, and Grand Rapids, Wis., and that owing to the difference in the freight rates complainant must shrink its profits in order to compete with them. Defendant's witness testified, however, that the fuel-wood rates do not apply on lumber trimmings in Wisconsin, but that the railroad commission of Wisconsin has established the following basis applicable to shipments within Wisconsin:

Lumber products, waste.—Waste lumber products, such as clippings, edgings, trimmings, short boards sawed from slabs, and other waste material, when loose and unassorted, not exceeding 2 inches in thickness and 47 inches in

length, not intended for fuel use. * * * Applies only via C. & N. W. and C., St. P., M. & O. Rys.: Eighty per cent of lumber rates. Lumber minimum weights.

On this basis the rate from Odanah to Rockford would be 10.4 cents. Defendant claims the description in the above item does not cover the commodity which complainant receives from Odanah. We are of the opinion that the description in the state tariff would apply to shipments of the character here involved. The shipments made by complainant weighed on the average over 43,000 pounds per car. The minimum on lumber is 34,000 pounds for cars under 60,000 pounds capacity, and 36,000 pounds for cars over 60,000 pounds.

In *Oregon & Washington Lumber Mfrs. Asso. v. S. P. Co.*, 21 I. C. C., 389, 395, we said:

Ordinarily the same rate is applied to all lumber without reference to its value or condition, and this rate frequently includes not only manufactured lumber, but articles made from it, like doors, sash, blinds, etc. To this general rule exceptions are sometimes made by the carriers themselves whenever the exigencies of a particular case require it; and without suggesting that any general departure from the present rule would be desirable or reasonable, we see no reason why, in particular cases, lumber may not properly be subjected to a further classification.

See also *Pacific Coast Lumber cases*, 14 I. C. C., 1, 23, 51; *Saginaw & Manistee Lumber Co. v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 119; *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370.

It is to be observed that there was not at the time the shipments involved were made, and there is not now, any rate in defendant's tariffs applicable to interstate shipments of "lumber trimmings." It is left to the discretion of defendant's inspectors to determine whether a given shipment shall be charged fuel-wood or lumber rates. The evidence shows that had the shipments in question consisted of what the inspector conceived to be lumber trimmings, the rate applicable to fuel wood would have been charged.

Upon consideration of all the facts of record we are of the opinion and find that rate charged by defendant on shipments here in question was unreasonable to the extent it exceeded 10.5 cents per 100 pounds, which we also find to be a reasonable maximum rate for the future. Defendant should incorporate in its tariff a provision, applicable to lumber trimmings shipped from Odanah to Rockford, which shall specifically define what dimensions and character of mill-run droppings shall be included within the term "lumber trimmings." An order will issue establishing a rate not in excess of 10.5 cents per 100 pounds on lumber trimmings, leaving it to defendant to reform its tariff in accordance with the views herein expressed.

We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon

at the rate herein found to have been unreasonable; that it has been damaged in an amount represented by the difference between the charges paid and the charges which would have accrued at the rate herein found reasonable; and that it is, therefore, entitled to an award of reparation in the sum of \$208.55, with interest from August 26, 1913.

An order will be entered in accordance with conclusions herein announced.

No. 4461.

ATLANTA FREIGHT BUREAU

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
ET AL.

No. 4637.

SAME

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 11, 1913. Decided February 3, 1914.

The complaint in the Western case, Docket No. 4461, alleges that the adjustment of rates from Cincinnati is unjustly preferential to Birmingham and unduly prejudicial to Atlanta, and also that the rates from Cincinnati to Atlanta are in themselves unjust and unreasonable; the complaint in the Eastern case, Docket No. 4637, alleges that the adjustment of rates from the eastern port cities of Baltimore, Philadelphia, New York, etc., and from the interior points basing on them, whether via all-rail lines or via ocean-and-rail lines, is unjustly preferential to Chattanooga, Knoxville, and Nashville, and unduly prejudicial to Atlanta; and also that the rates from the points of origin described are in themselves unjust and unreasonable; violation of the fourth section is alleged in the maintenance of ocean-and-rail rates to certain of the Tennessee cities less than the corresponding rates to Atlanta; *Held:*

1. That the contention as to unjust discrimination and undue prejudice in the maintenance of lower scales of rates from the Ohio River crossings to Birmingham than to Atlanta is not established, except as to the rates from Cincinnati, which should be put on a parity to both destinations.
2. That the present adjustment of rates from the eastern port cities and interior points to Atlanta, whether all-rail, ocean-and-rail, or rail-ocean-and-rail, is not found to be unreasonable or to work undue discrimination in favor of Chattanooga, Knoxville, or Nashville.

3. No reductions are now ordered or suggested in the scale of rates applying from Cincinnati to Atlanta; but in changing the rates from Cincinnati to comply with the Commission's opinion in the fourth section cases, the necessity for a parity in the rates to Atlanta and Birmingham should be kept in mind. The present parity of rates from the several Ohio River crossings to Atlanta is not disturbed, nor is the scale of differentials from the lower Ohio River crossings to Birmingham. A revision of the present flat differential of 4 cents on traffic from Memphis is suggested.
4. In other respects the complaints are dismissed.

Wimbish & Ellis for complainant.

R. Walton Moore, M. P. Callaway, and F. W. Gwathmey for Nashville, Chattanooga & St. Louis Railway; Cincinnati, New Orleans & Texas Pacific Railway Company; Southern Railway Company; Alabama Great Southern Railroad Company; Seaboard Air Line Railway; Atlantic Coast Line Railroad Company; Georgia Railroad; Norfolk & Western Railway Company; Ocean Steamship Company of Savannah; Old Dominion Steamship Company; and Merchants & Miners Transportation Company.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

Claudian B. Northrop for Southern Railway Company.

Perkins Baxter for Nashville Traffic Bureau, intervener.

A. E. Beck for Merchants & Manufacturers Association of Baltimore, intervener.

Herbert Sheridan for Baltimore Chamber of Commerce, intervener.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

Under date of October 2, 1911, a complaint was filed by the Atlanta Freight Bureau, an incorporated association of individuals, firms, and corporations engaged in merchandising and manufacturing in the city of Atlanta, Ga. The complaint is directed against the several railway lines operating between Cincinnati, Ohio, and Atlanta, Ga., on the one hand and between Cincinnati and Birmingham, Ala., on the other. It alleges that the rates from Cincinnati to Atlanta on all classes and commodities are unjustly discriminatory in favor of Birmingham and unduly prejudicial to Atlanta, in violation of section 3 of the act and likewise that the rates in question are in themselves unjust, unreasonable, and excessive in violation of section 1.

The complaint seeks the establishment of rates from Cincinnati to Atlanta not to exceed those in effect from Cincinnati to Birmingham and particularly asks for the establishment of the scale of rates for the numbered classes, Cincinnati to Atlanta, approved by the Commission in the so-called first *Cincinnati case*, *Freight Bureau v. O., N. O. & T. P. Ry. Co.*, 6 I. C. C., 195, which rates are somewhat lower than those now in effect from Cincinnati to Birmingham.

While nominally only the rates from Cincinnati are directly involved in the proceeding, it is admittedly the complainant's expectation that rates from the other gateways will be adjusted to correspond to any change made in the Cincinnati rates. The case thus brings into question the whole adjustment of rates from and via the Ohio River crossings and other gateways leading from central freight association territory and the west to the southeast.

This case is docketed as No. 4461 and for convenience will be referred to as the Western case.

The complaint in the related case, No. 4637, which will be referred to as the Eastern case, was filed on January 20, 1912, by the same interests and attacks the rates in force on classes and commodities from Boston, Mass.; Providence, R. I.; New York, N. Y.; Philadelphia, Pa.; and Baltimore, Md., and likewise those from interior points in the east to Atlanta, both all-rail and ocean-and-rail. These rates are alleged to be unjust and unreasonable and also unduly discriminatory in favor of Chattanooga, Knoxville, and Nashville, Tenn. Violation of the fourth section is also alleged in the maintenance of ocean-and-rail rates to certain of the Tennessee cities less than the corresponding rates to Atlanta.

The complaint asks for the establishment of all-rail and ocean-and-rail rates from New York and Philadelphia to Atlanta identical with the rates to be established from Baltimore, which in turn are to be no higher than the rates from Cincinnati and Louisville to Atlanta, as may be determined in the Western case.

The two cases were presented together in an extended series of hearings and provide a voluminous record of testimony, exhibits, briefs, and arguments. They will be disposed of in one report, although of necessity they will be discussed separately as to most of their features.

THE WESTERN CASE.

The short line of railway serving both Atlanta and Birmingham from Cincinnati is the Cincinnati Southern to Chattanooga, 336 miles, thence over the Western & Atlantic to Atlanta, and over the Alabama Great Southern to Birmingham. The total short-line distance is said in the complaint to be 474 miles to Atlanta and 481 miles to Birmingham. The answer of one of the defendants makes the distance from Cincinnati to Birmingham 479 miles, but no serious exception is taken to the distance as stated in the complaint.

As has appeared in numerous cases before the Commission, the Cincinnati Southern road is owned by the city of Cincinnati, having been built by it for the purpose of securing a direct outlet to southern and southeastern territory. It is operated under a long-term lease by the Cincinnati, New Orleans & Texas Pacific Railway Company, which

is a part of the Queen & Crescent system and is closely affiliated with the Southern Railway system. The Western & Atlantic road, extending from Chattanooga to Atlanta, is the property of the state of Georgia, and is leased to the Nashville, Chattanooga & St. Louis Railway Company and operated by it as its Atlanta division, forming part of a through line from Atlanta via Chattanooga and Nashville to the Ohio and Mississippi rivers. The Alabama Great Southern, which affords the Birmingham connection from Chattanooga, is another part of the Queen & Crescent system, so that the short line from Cincinnati to Birmingham is really under the same general management.

The complainant's consideration of routes is, for the most part, limited to the short lines as described above, but, as the defendants show, there are also alternative routes from Chattanooga to Atlanta furnished by the Southern, by the Central of Georgia, and by the Central of Georgia in connection with the Atlanta & West Point. In addition to these routes the Louisville & Nashville has a direct line from Cincinnati by way of Knoxville to Atlanta, and it is also said that some traffic moves over the Baltimore & Ohio Southwestern from Cincinnati to Louisville and thence over various combinations of connecting lines to Atlanta, frequently by way of Birmingham.

The Louisville & Nashville also has a one-line haul, Cincinnati to Birmingham, by way of Nashville and Decatur, and there are numerous combinations of lines on Louisville and other junction points forming routes to Birmingham over which traffic is said to move. Only the carriers included in the shorter and more direct lines are made parties defendant in the complaint.

In the complaint as presented the prayer for the establishment of Cincinnati-Atlanta rates on a substantial parity with the Cincinnati-Birmingham rates is based largely on the relative mileage, the short-line mileage to Atlanta being slightly less than that to Birmingham and the circumstances attending transportation from Cincinnati to Atlanta being generally held to be similar to or more favorable than those attending transportation from Cincinnati to Birmingham. It is thus contended that the exaction of a higher scale of rates on Atlanta traffic than on Birmingham traffic is not justified.

As set forth in the record, the class rates from Cincinnati to Atlanta and to Birmingham are as follows, in cents per 100 pounds, except on class F, which is per barrel:

Class-----	1	2	3	4	5	6	A	B	C	D	E	H	F
To Atlanta -----	98	87	78	68	52	41	28	36	28	24	48	48	48
To Birmingham-----	89	79	68	55	47	36	32	36	28	24	43	43	48

It thus appears that Birmingham has the advantage of differentials under Atlanta on the numbered classes, amounting to 10 cents on third class, 9 cents on first class, 8 cents on second and fourth classes,
29 I. C. C.

While nominally only the rates from Cincinnati are directly involved in the proceeding, it is admittedly the complainant's expectation that rates from the other gateways will be adjusted to correspond to any change made in the Cincinnati rates. The case thus brings into question the whole adjustment of rates from and via the Ohio River crossings and other gateways leading from central freight association territory and the west to the southeast.

This case is docketed as No. 4461 and for convenience will be referred to as the Western case.

The complaint in the related case, No. 4637, which will be referred to as the Eastern case, was filed on January 20, 1912, by the same interests and attacks the rates in force on classes and commodities from Boston, Mass.; Providence, R. I.; New York, N. Y.; Philadelphia, Pa.; and Baltimore, Md., and likewise those from interior points in the east to Atlanta, both all-rail and ocean-and-rail. These rates are alleged to be unjust and unreasonable and also unduly discriminatory in favor of Chattanooga, Knoxville, and Nashville, Tenn. Violation of the fourth section is also alleged in the maintenance of ocean-and-rail rates to certain of the Tennessee cities less than the corresponding rates to Atlanta.

The complaint asks for the establishment of all-rail and ocean-and-rail rates from New York and Philadelphia to Atlanta identical with the rates to be established from Baltimore, which in turn are to be no higher than the rates from Cincinnati and Louisville to Atlanta, as may be determined in the Western case.

The two cases were presented together in an extended series of hearings and provide a voluminous record of testimony, exhibits, briefs, and arguments. They will be disposed of in one report, although of necessity they will be discussed separately as to most of their features.

THE WESTERN CASE.

The short line of railway serving both Atlanta and Birmingham from Cincinnati is the Cincinnati Southern to Chattanooga, 336 miles, thence over the Western & Atlantic to Atlanta, and over the Alabama Great Southern to Birmingham. The total short-line distance is said in the complaint to be 474 miles to Atlanta and 481 miles to Birmingham. The answer of one of the defendants makes the distance from Cincinnati to Birmingham 479 miles, but no serious exception is taken to the distance as stated in the complaint.

As has appeared in numerous cases before the Commission, the Cincinnati Southern road is owned by the city of Cincinnati, having been built by it for the purpose of securing a direct outlet to southern and southeastern territory. It is operated under a long-term lease by the Cincinnati, New Orleans & Texas Pacific Railway Company, which

is a part of the Queen & Crescent system and is closely affiliated with the Southern Railway system. The Western & Atlantic road, extending from Chattanooga to Atlanta, is the property of the state of Georgia, and is leased to the Nashville, Chattanooga & St. Louis Railway Company and operated by it as its Atlanta division, forming part of a through line from Atlanta via Chattanooga and Nashville to the Ohio and Mississippi rivers. The Alabama Great Southern, which affords the Birmingham connection from Chattanooga, is another part of the Queen & Crescent system, so that the short line from Cincinnati to Birmingham is really under the same general management.

The complainant's consideration of routes in, for the most part, limited to the short lines as described above, but, as the defendants show, there are also alternative routes from Chattanooga to Atlanta furnished by the Southern, by the Central of Georgia, and by the Central of Georgia in connection with the Atlanta & West Point. In addition to these routes the Louisville & Nashville has a direct line from Cincinnati by way of Knoxville to Atlanta, and it is also said that some traffic moves over the Baltimore & Ohio Southwestern from Cincinnati to Louisville and thence over various combinations of connecting lines to Atlanta, frequently by way of Birmingham.

The Louisville & Nashville also has a one-line haul, Cincinnati to Birmingham, by way of Nashville and Decatur, and there are numerous combinations of lines on Louisville and other junction points forming routes to Birmingham over which traffic is said to move. Only the carriers included in the shorter and more direct lines are made parties defendant in the complaint.

In the complaint as presented the prayer for the establishment of Cincinnati-Atlanta rates on a substantial parity with the Cincinnati-Birmingham rates is based largely on the relative mileage, the shorter line mileage to Atlanta being slightly less than that to Birmingham and the circumstances attending transportation from Cincinnati to Atlanta being generally held to be similar to or more favorable than those attending transportation from Cincinnati to Birmingham. It is thus contended that the exaction of a higher scale of rates on Atlanta traffic than on Birmingham traffic is not justified.

As set forth in the record, the class rates from Cincinnati to Atlanta and to Birmingham are as follows, in cents per 100 pounds, except on class F, which is per barrel:

Class	1	2	3	4	5	6	A	B	C	D	E	F
To Atlanta	98	87	78	63	52	41	28	26	23	24	48	48
To Birmingham	89	79	68	55	47	36	22	20	18	24	45	45

It thus appears that Birmingham has the advantage of differential under Atlanta on the numbered classes, amounting to 10 cents on third class, 9 cents on first class, 8 cents on second and fourth

While nominally only the rates from Cincinnati are directly involved in the proceeding, it is admittedly the complainant's expectation that rates from the other gateways will be adjusted to correspond to any change made in the Cincinnati rates. The case thus brings into question the whole adjustment of rates from and via the Ohio River crossings and other gateways leading from central freight association territory and the west to the southeast.

This case is docketed as No. 4461 and for convenience will be referred to as the Western case.

The complaint in the related case, No. 4637, which will be referred to as the Eastern case, was filed on January 20, 1912, by the same interests and attacks the rates in force on classes and commodities from Boston, Mass.; Providence, R. I.; New York, N. Y.; Philadelphia, Pa.; and Baltimore, Md., and likewise those from interior points in the east to Atlanta, both all-rail and ocean-and-rail. These rates are alleged to be unjust and unreasonable and also unduly discriminatory in favor of Chattanooga, Knoxville, and Nashville, Tenn. Violation of the fourth section is also alleged in the maintenance of ocean-and-rail rates to certain of the Tennessee cities less than the corresponding rates to Atlanta.

The complaint asks for the establishment of all-rail and ocean-and-rail rates from New York and Philadelphia to Atlanta identical with the rates to be established from Baltimore, which in turn are to be no higher than the rates from Cincinnati and Louisville to Atlanta, as may be determined in the Western case.

The two cases were presented together in an extended series of hearings and provide a voluminous record of testimony, exhibits, briefs, and arguments. They will be disposed of in one report, although of necessity they will be discussed separately as to most of their features.

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As set forth in the record, the class rates from Cincinnati to Atlanta and to Birmingham are as follows, in cents per 100 p except on class F, which is per barrel:

Class.....	1	2	3	4	5	6	A	B	C	D
To Atlanta	98	87	78	63	52	41	23	25	23	24
To Birmingham	89	79	68	55	47	36	32	35	29	24

It thus appears that Birmingham has the advantage of 1¢ under Atlanta on the numbered classes, amounting to 1¢ third class, 9 cents on first class, 8 cents on second and ten

and 5 cents on fifth and sixth classes. Of the lettered classes, B, C, D, and F take the same rates to both destinations. Class A takes a lower rate to Atlanta than to Birmingham, the differential being 4 cents, while classes E and H are 5 cents higher to Atlanta than to Birmingham. Many commodity rates are also shown, but there appears to be no definite relationship between the two points with respect to these, as in some cases they are the same to both destinations, in some cases lower to Atlanta, and in some cases lower to Birmingham.

The complainant showed that Atlanta excels Birmingham in population and wealth, in bank clearings, capitalization, and deposits, in industrial and manufacturing operations, including the capitalization of plants, the value of the materials used, the value of the products, the number and compensation of employees, etc. The wholesale and jobbing business of Atlanta is more extensive than that of Birmingham, and its geographical location is said to be more favorable to development along such lines than that of Birmingham. Facts of this character, however, can carry weight only to the extent to which a definite relation between them and freight rates can be shown. With respect to means of communication with surrounding territory, Atlanta is said to be on a footing of substantial equality with Birmingham, there being about the same number of lines radiating from one center as from the other.

It is maintained that there is no substantial difference in the cost of transportation from Cincinnati to the two cities, the advantage, if any, being claimed for Atlanta on account of the slightly less distance. The roads forming the lines from Cincinnati to Atlanta are said to be in a prosperous condition financially. As indicated above, the Cincinnati, New Orleans & Texas Pacific is part of the short line to both Atlanta and Birmingham, and it is shown that the average net revenues per mile of road of the Cincinnati, New Orleans & Texas Pacific compare favorably with those of representative lines north of the Ohio River and are much higher than the averages in general among the lines in the south. It is said, further, that the Western & Atlantic, which completes the short line to Atlanta, is much more prosperous, as indicated by its net revenues per mile, than the Alabama Great Southern, which reaches Birmingham. It is claimed, therefore, that the Atlanta lines are in such a financial condition that the reduction of the rates prayed for on Atlanta traffic would not have a serious effect on their prosperity.

Except in a comparatively few instances there are no joint through rates published from the territory north of the Ohio River to Atlanta or Birmingham. From points like Chicago, Milwaukee, and Peoria there are in effect proportional rates to the Ohio River crossings governed by the southern classification for traffic destined beyond. These are used in combination with the local rates

south of the river, which, of course, are governed by the southern classification. Generally speaking, from points in central freight association territory east of the Illinois-Indiana state line the rates are combinations of local rates to and beyond the river, the official classification governing in the one case and the southern in the other. It thus appears that, on account of its lower scale of rates from the Ohio River, Birmingham has the advantage of Atlanta on traffic moving from a large territory including such points as Detroit, Toledo, Cleveland, Buffalo, and Pittsburgh, from most of which the movement would ordinarily be by way of Cincinnati. The advantage is even greater in the cases in which lower combinations may be made on Louisville and the other lower crossings.

For instance, the first-class rate from Detroit to Atlanta made by combination on Cincinnati is $38\frac{1}{2}$ plus 98 or \$1.36 $\frac{1}{2}$; to Birmingham the combination is $38\frac{1}{2}$ plus 89 or \$1.27 $\frac{1}{2}$. On the Louisville combination Detroit would get a rate of 43 plus 79 or \$1.22 to Birmingham. A similar condition exists with reference to the rates from Toledo and Cleveland, etc., though it should be noted that traffic might naturally move from these points to Birmingham by way of Louisville, while Cincinnati is the natural gateway for traffic moving to Atlanta. The complainant claims, however, that in all cases in which the direct line is by way of Cincinnati the rates to Atlanta should not exceed those to Birmingham.

The record contains detailed statements relating to the rate adjustments, beginning with the opening of the early lines from Cincinnati and the other river crossings to Atlanta and Birmingham. There have been numerous fluctuations and variations from time to time in the rates to these points of destination, due to the competition of carriers and of markets and divers other causes. The history of these rates has been reviewed at length in previous decisions and it may be sufficient for our present purpose to note that the scale of rates from Cincinnati to Atlanta, beginning with 98 cents on first class, applies also from the other Ohio River crossings, such as Louisville, Ky., Evansville, Ind., Paducah, Ky., and Cairo, Ill., with rates from Memphis, Tenn., and other lower Mississippi River crossings a 4-cent differential lower.

As shown in the record, the distances in miles from the Ohio River crossings and Memphis to Atlanta and Birmingham are as follows:

From—	To Atlanta.	To Bir- mingham.	Excess to Atlanta.
Cincinnati.....	474	481	(¹)
Louisville.....	474	364	89
Evansville.....	444	364	89
Cairo.....	491	330	121
Memphis.....	417	261	166

¹ Birmingham distance slightly greater.

and 5 cents on fifth and sixth classes. Of the lettered classes, B, C, D, and F take the same rates to both destinations. Class A takes a lower rate to Atlanta than to Birmingham, the differential being 4 cents, while classes E and H are 5 cents higher to Atlanta than to Birmingham. Many commodity rates are also shown, but there appears to be no definite relationship between the two points with respect to these, as in some cases they are the same to both destinations, in some cases lower to Atlanta, and in some cases lower to Birmingham.

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As shown in the record, the distances in miles from the Ohio River crossings and Memphis to Atlanta and Birmingham are as follows:

From—	To Atlanta.	To Bir- mingham.	Excess to Atlanta.
Cincinnati.....	474	451	(1)
Louisville.....	474	394	80
Evansville.....	444	364	80
Cairo.....	491	330	161
Memphis.....	417	251	166

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south of the river, which, of course, are governed by the southern classification. Generally speaking, from points in central freight association territory east of the Illinois-Indiana state line the rates are combinations of local rates to and beyond the river, the official classification governing in the one case and the southern in the other. It thus appears that, on account of its lower scale of rates from the Ohio River, Birmingham has the advantage of Atlanta on traffic moving from a large territory including such points as Detroit, Toledo, Cleveland, Buffalo, and Pittsburgh, from most of which the movement would ordinarily be by way of Cincinnati. The advantage is even greater in the cases in which lower combinations may be made on Louisville and the other lower crossings.

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As shown in the record, the distances in miles from the Ohio River crossings and Memphis to Atlanta and Birmingham are as follows:

From—	To Atlanta.	To Bir- mingham.	Excess to Atlanta.
Cincinnati.....	474	431	(¹)
Louisville.....	474	394	80
Evansville.....	444	364	80
Cairo.....	491	330	161
Memphis.....	417	251	166

¹ Birmingham distance slightly greater.

It will be observed that the several Ohio River points are substantially equidistant from Atlanta, being situated, as it was expressed, on the arc of a circle. Evansville is about 80 miles less distant from Atlanta than Cincinnati, and Cairo 15 miles more distant, these two points representing the extremes of the Ohio River crossings. The parity of rates from these several crossings is the result of the so-called Cooley arbitration, dating back to the year 1886, and has been accepted as the most equitable solution of the difficulties then encountered in the adjustment of rates governing the movement of traffic from and via these points to the southeast.

The adjustment of the rates to Birmingham was likewise determined in the Cooley arbitration on the basis of the Louisville rates, with Cincinnati established differentials higher, beginning with 10 cents on first class; Evansville, Paducah, and Cairo the same as Louisville; and Memphis and the other lower Mississippi crossings the established differentials lower, 4 cents on all classes. Cincinnati is the most distant of the Ohio River crossings from Birmingham, the difference in distance being represented by the 10-cent scale of differentials over Louisville. The variation in distance among the other Ohio River crossings is a little more marked than in the case of Atlanta, the greatest difference being at Cairo, which is about 60 miles nearer Birmingham than is Louisville.

For a considerable period the rate statements filed of record show an approximation of Atlanta rates to the Birmingham rates, though it is insisted that there was never any close relationship, the Birmingham rates being made on the basis of Selma and Montgomery, which points have the advantage of water competition with respect to traffic from both the eastern and the central states. Upon the completion of the line between Memphis and Birmingham by the Kansas City, Memphis & Birmingham, now part of the Frisco system, the distance between those points was reduced to 251 miles, and the management of that line felt constrained to make a reduction in the scale of rates. The proposal to do so aroused opposition on the part of other lines serving the southeast, and there were endeavors through conferences and extended correspondence to dissuade the Kansas City, Memphis & Birmingham from its proposed action. Notwithstanding these efforts, the Kansas City, Memphis & Birmingham reduced the Memphis rates on September 1, 1888, to the scale beginning with 75 cents on first class. This reduction applied only over this line, Memphis to Birmingham, but the competing lines via other gateways felt compelled to meet the reduction, and in the course of the succeeding 12 months the rates from Cairo, Paducah, Evansville, Louisville, and Cincinnati were correspondingly reduced.

The present relation of the rates from the Ohio River crossings and Memphis to Atlanta and Birmingham is set forth in the following table, in cents per 100 pounds, except class F, which is per barrel:

	1	2	3	4	5	6	A	B	C	D	E	H	F
TO ATLANTA.													
From all crossings, Cincinnati to Cairo, inclusive.....	98	87	78	63	52	41	28	36	28	24	48	48	48
From Memphis.....	94	83	74	59	48	37	24	32	24	20	44	44	40
Memphis differentials under Ohio River crossings.....	4	4	4	4	4	4	4	4	4	4	4	4	8
TO BIRMINGHAM.													
From Cincinnati.....	89	79	68	55	47	36	32	36	28	24	43	43	48
From other crossings, Louisville to Cairo, inclusive.....	79	69	58	47	40	30	28	34	26	22	39	39	44
From Memphis.....	75	65	54	43	36	26	24	30	22	18	35	35	36
Louisville differentials under Cincinnati.....	10	10	10	8	7	6	4	2	2	2	4	4	4
Memphis differentials under Cincinnati.....	14	14	14	12	11	10	8	6	6	6	8	8	12
Memphis differentials under other crossings, Louisville to Cairo, inclusive.....	4	4	4	4	4	4	4	4	4	4	4	4	8

The opinion of the Commission in the first *Cincinnati case*, *supra*, dated May 29, 1894, fixed the rates from Cincinnati to Atlanta and Birmingham as follows on the numbered classes:

Class	1	2	3	4	5	6
To Atlanta	86	73	60	45	35	27
To Birmingham....	87	74	60	45	35	27

but these rates never became effective, as it was held that the Commission then had no authority to prescribe rates for the future. It should be noted, however, that the present Birmingham scale is not much in excess of the one prescribed in that opinion, especially on first class.

In many of its features the present case resembles the first *Cincinnati case* and the representatives of the complainant seek to commit the Commission to substantially the same scale of rates for Atlanta as was prescribed in 1894. Our attention is called, however, to the fact that in deciding the second *Cincinnati case*, *Receivers & Shippers Asso. v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440, the Commission, in view of changed conditions which obtained at that time (1910) contented itself with fixing the rates from Cincinnati to Chattanooga on a scale considerably higher than that proposed in the first *Cincinnati case*, without fixing rates to points beyond Chattanooga, like Atlanta and Birmingham, although there was an evident expectation that the reductions ordered for Chattanooga would result in corresponding reductions to other southern points. As a matter of fact the carriers complied with the Commission's order in reducing the rates from Cincinnati to Chattanooga and went a little beyond it in making corresponding reductions from the other gateways to Chattanooga, but made no change in the rate adjustment for Atlanta and other points beyond Chattanooga.

Except for slight changes in the rates on the lettered classes the present scale of rates to Atlanta is the result of reductions made effective on February 1, 1905. The first-class rate, Cincinnati to Atlanta, in effect just before that time was \$1.87 per 100 pounds while the Birmingham rates were on the 89-cent scale as now. The reduction on first class to Atlanta was 9 cents, which is one-half of the difference formerly existing between Birmingham and Atlanta. Considerable effort was made on the part of the complainant to establish the contention that the 1905 scale of rates to Atlanta was made effective by voluntary action on the part of the carriers and consequently can not be considered unreasonably low or unremunerative. It is maintained by the defendants, however, that the reductions made were the result of action taken by the Georgia state commission in fixing low intrastate rates for the express purpose of forcing down interstate rates and of pressure brought to bear by the authorities of the city of Atlanta. This feature of the situation has already had consideration at some length, notably in the case of the *Morgan Grain Co. v. A. C. L. R. R. Co.*, 19 I. C. C., 460, the record of which so far as applicable, was stipulated into the present record. The conclusion reached after consideration of all the matter presented in the *Morgan case* was, briefly, that the complainant had not sustained its contention that the reduced rates accorded to Atlanta in 1905 were made of the carriers' own free will and were acceptable to them. On the other hand, it was concluded that the reductions were the result of compromise and not made willingly. It does not appear that any additional information has been developed in the present case to justify any change in the opinion already expressed with reference to this matter, and it is claimed by all the witnesses for the defendants that the present scale of rates to Atlanta is low and the result of sharp competition.

The complainant's contention as to the unreasonableness of the rates from Cincinnati to Atlanta does not appear to be supported by much direct evidence. The claim that the 1905 scale of rates was acceptable to the carriers as just, reasonable, and remunerative does not necessarily lead to the inference that rates still further reduced would be reasonable. The complainant makes numerous comparisons with rates from Cincinnati and other points to various destinations at approximately the same distance as Atlanta, but it would appear that transportation in many of the cases selected for comparison is affected by trunk-line conditions, water competition or otherwise, all tending to make a lower scale of rates. On the other hand, the defendants submitted an elaborate series of exhibits for corresponding distances in other territorial groups in which transportation conditions are claimed to be similar so far as may be recognized from characteristic averages to those obtaining in the group.

which includes the section south of Cincinnati. The general scale of the rates so selected for comparison is considerably higher than that of the Cincinnati-Atlanta rates. Other exhibits show, also, numerous southern points less distant from Cincinnati with higher rates than those to Atlanta.

Much stress is also laid by the complainant on the high average revenues of the roads comprising the short line to Atlanta. The same argument was advanced in the second *Cincinnati case, supra*. In that case attention was called to the somewhat unusual character of the road operated by the Cincinnati, New Orleans & Texas Pacific in that it is a direct line between its termini with no branches and in large measure dependent on its connections for its tonnage, practically all of which is carried the entire length of the line between Cincinnati and Chattanooga. In other words, there is little local traffic handled by this road. In the present record a somewhat similar condition is shown to exist with reference to the Western & Atlantic division of the Nashville, Chattanooga & St. Louis, connecting Chattanooga and Atlanta. The complainant's argument with respect to the returns from operation was limited to the consideration of the particular main lines involved without respect to their relation to branch lines and other divisions more or less intimately connected in operation. As is shown by the testimony and exhibits, that part of the Nashville, Chattanooga & St. Louis between Chattanooga and Atlanta makes a very favorable showing as to average revenues per mile of line in comparison with other divisions and branch lines. In the case just cited it was the conclusion of the Commission that rates should not be fixed for a main line without reference to the branch lines contributing to it and to all the lines operating in the territory. Taking the averages for the entire line of the Nashville, Chattanooga & St. Louis, the showing is much less favorable, while if the operations of the Cincinnati, New Orleans & Texas Pacific are considered in connection with those of its affiliated lines, the Southern Railway and the Alabama Great Southern Railroad, its average per mile will be greatly reduced.

The testimony of witnesses for all the carriers is unanimous with reference to the increase in the cost of operation during the past decade. Elaborate exhibits were submitted showing substantial increases in the compensation of employees of practically every class, reductions in the hours of service with the consequent increase in the number of employees, advances in the cost of equipment and nearly all materials and supplies required in the operation of the road, etc.

The complaint lays much stress on the reductions accorded to Chattanooga in the second *Cincinnati case* and on the fact that consequent reductions were not made to Atlanta. It will be noted, however, that the opinion of the Commission characterized the scale of rates to

Except for slight changes in the rates on the lettered classes the present scale of rates to Atlanta is the result of reductions made effective on February 1, 1905. The first-class rate, Cincinnati to Atlanta, in effect just before that time was \$1.07 per 100 pounds, while the Birmingham rates were on the 89-cent scale as now. The reduction on first class to Atlanta was 9 cents, which is one-half of the difference formerly existing between Birmingham and Atlanta. Considerable effort was made on the part of the complainant to establish the contention that the 1905 scale of rates to Atlanta was made effective by voluntary action on the part of the carriers and consequently can not be considered unreasonably low or unremunerative. It is maintained by the defendants, however, that the reductions made were the result of action taken by the Georgia state commission in fixing low intrastate rates for the express purpose of forcing down interstate rates and of pressure brought to bear by the authorities of the city of Atlanta. This feature of the situation has already had consideration at some length, notably in the case of the *Morgan Grain Co. v. A. C. L. R. R. Co.*, 19 I. C. C., 460, the record of which so far as applicable, was stipulated into the present record. The conclusion reached after consideration of all the matter presented in the *Morgan case* was, briefly, that the complainant had not sustained its contention that the reduced rates accorded to Atlanta in 1905 were made of the carriers' own free will and were acceptable to them. On the other hand, it was concluded that the reductions were the result of compromise and not made willingly. It does not appear that any additional information has been developed in the present case to justify any change in the opinion already expressed with reference to this matter, and it is claimed by all the witnesses for the defendants that the present scale of rates to Atlanta is low and the result of sharp competition.

The complainant's contention as to the unreasonableness of the rates from Cincinnati to Atlanta does not appear to be supported by much direct evidence. The claim that the 1905 scale of rates was acceptable to the carriers as just, reasonable, and remunerative does not necessarily lead to the inference that rates still further reduced would be reasonable. The complainant makes numerous comparisons with rates from Cincinnati and other points to various destinations at approximately the same distance as Atlanta, but it would appear that transportation in many of the cases selected for comparison is affected by trunk-line conditions, water competition, or otherwise, all tending to make a lower scale of rates. On the other hand, the defendants submitted an elaborate series of exhibits for corresponding distances in other territorial groups in which transportation conditions are claimed to be similar so far as may be recognized from characteristic averages to those obtaining in the group

which includes the section south of Cincinnati. The general scale of the rates so selected for comparison is considerably higher than that of the Cincinnati-Atlanta rates. Other exhibits show, also, numerous southern points less distant from Cincinnati with higher rates than those to Atlanta.

Much stress is also laid by the complainant on the high average revenues of the roads comprising the short line to Atlanta. The same argument was advanced in the second *Cincinnati case, supra*. In that case attention was called to the somewhat unusual character of the road operated by the Cincinnati, New Orleans & Texas Pacific in that it is a direct line between its termini with no branches and in large measure dependent on its connections for its tonnage, practically all of which is carried the entire length of the line between Cincinnati and Chattanooga. In other words, there is little local traffic handled by this road. In the present record a somewhat similar condition is shown to exist with reference to the Western & Atlantic division of the Nashville, Chattanooga & St. Louis, connecting Chattanooga and Atlanta. The complainant's argument with respect to the returns from operation was limited to the consideration of the particular main lines involved without respect to their relation to branch lines and other divisions more or less intimately connected in operation. As is shown by the testimony and exhibits, that part of the Nashville, Chattanooga & St. Louis between Chattanooga and Atlanta makes a very favorable showing as to average revenues per mile of line in comparison with other divisions and branch lines. In the case just cited it was the conclusion of the Commission that rates should not be fixed for a main line without reference to the branch lines contributing to it and to all the lines operating in the territory. Taking the averages for the entire line of the Nashville, Chattanooga & St. Louis, the showing is much less favorable, while if the operations of the Cincinnati, New Orleans & Texas Pacific are considered in connection with those of its affiliated lines, the Southern Railway and the Alabama Great Southern Railroad, its average per mile will be greatly reduced.

The testimony of witnesses for all the carriers is unanimous with reference to the increase in the cost of operation during the past decade. Elaborate exhibits were submitted showing substantial increases in the compensation of employees of practically every class, reductions in the hours of service with the consequent increase in the number of employees, advances in the cost of equipment and nearly all materials and supplies required in the operation of the road, etc.

The complaint lays much stress on the reductions accorded to Chattanooga in the second *Cincinnati case* and on the fact that consequent reductions were not made to Atlanta. It will be noted, however, that the opinion of the Commission characterized the scale of rates to

Chattanooga complained of in that case, beginning with 76 cents on first class, as being but little more than just and reasonable and as lower than similar rates prescribed by the railroad commissions in most of the southern states and lower than the interstate rates made by southern roads in general for similar distances. It should also be noted that the reductions made in 1905 applied to Atlanta territory only and the reductions ordered for Chattanooga in 1910 restored in a measure the relationship previously existing between the two points. The order issued in the second *Cincinnati case, supra*, fixed rates from Cincinnati to Chattanooga on the six numbered classes and there is given below a comparison of the Cincinnati-Chattanooga rates with the Cincinnati-Atlanta rates on these six classes with the resulting averages per ton per mile:

From Cincinnati—	1	2	3	4	5	6
To Chattanooga, 336 miles.....	70	60	53	44	38	29
Average per ton per mile, cents.....	4.167	3.572	3.155	2.619	2.262	1.726
To Atlanta, 474 miles.....	98	87	78	63	52	41
Average per ton per mile, cents.....	4.135	3.671	3.291	2.658	2.194	1.730

On comparing the present rates to the two destinations on a strictly mileage basis, as in the above averages, it will be seen that the rates on first and fifth classes to Atlanta average slightly less than the corresponding rates to Chattanooga. The comparison is reversed with respect to second, third, fourth, and sixth class rates, but the difference is not substantial in any case. To retain the present adjustment to Atlanta would perhaps not be altogether in accord with that part of the mileage theory of rate making which reduces the ton-mile average as the distance increases, although it may be considered that the present adjustment approximates the theory as closely as may be practicable in the case under consideration.

Viewing the situation presented in the Western case in its entirety, it is our judgment and determination, in the light of all the facts, that Atlanta has not been unjustly discriminated against compared with Birmingham except in the case of shipments through Cincinnati. With respect to such shipments the defendants have failed to put forward any persuasive reasons or justifying circumstances tending to establish the propriety and lawfulness of the higher rates to Atlanta. In several instances the same carriers participate in traffic from Cincinnati to both destinations. The Southern Railway and its affiliations, the Alabama Great Southern and the Cincinnati, New Orleans & Texas Pacific, presumably handle a considerable portion of the traffic to both points, and the Cincinnati, New Orleans & Texas Pacific carries it as far as Chattanooga—more than two-thirds of the way—irrespective of the final destination. The Louisville & Nashville, however, is the only single line which

reaches both points directly from Cincinnati. The distance via this road to Atlanta is 481 miles, and to Birmingham 508 miles. As previously noted, the Cincinnati, New Orleans & Texas Pacific and the Alabama Great Southern form the short line to Birmingham, with a mileage of 481 miles, while the Cincinnati, New Orleans & Texas Pacific-Southern route to Atlanta is 489 miles, compared with the short-line distance of 474 miles. It thus appears that the direct lines involve comparatively small variations in the length of the haul, and it may be considered that other conditions of transportation are substantially the same whether the movement is to Atlanta or to Birmingham.

We find nothing in this record requiring a change in the present differentials in favor of the lower Ohio River crossings. The distances through these crossings are less, sometimes substantially so, to Birmingham than to Atlanta, and other conditions are substantially similar. The application of a flat differential of 4 cents to the rates on all classes alike through Memphis does not appear to be justified. The differential was, it seems, originally fixed at this amount for grain, but it has for years been uniformly applied to all classes. It would seem appropriate enough to continue differentials at 4 cents for the several lettered classes, but for the numbered classes a scale approximating that now obtaining between Cincinnati and Louisville is suggested as being more in line with the usual practice with respect to the application of differentials.

Nothing in this report should be construed as prescribing any fixed scale of rates on classes or commodities from Cincinnati to Atlanta. In compliance with the forthcoming report in the fourth section cases it may be necessary to make some changes in the rates from Cincinnati to Atlanta and to Birmingham. Such changes should be made having in mind the necessity for a parity in the rates from and through Cincinnati to the two points of destination named.

An order will be entered requiring the defendants, for a period of two years, not to charge higher rates from Cincinnati to Atlanta than they contemporaneously charge on the same kind of traffic from Cincinnati to Birmingham. In all other respects the complaint in the Western case must be denied.

THE EASTERN CASE.

In the Eastern case, as was noted above, the complaint not only brings into issue the reasonableness of the whole body of rates to Atlanta from the eastern port cities of Boston, Providence, New York, Philadelphia, and Baltimore and the interior points whose rates are based upon those from the ports, but also attacks these rates as unduly discriminatory against Atlanta and in favor of Chattanooga, Knoxville, and Nashville, and alleges violation of the 29 I. C. C.

fourth section of the act in the exaction of higher rates on shipments to Atlanta than to certain of the Tennessee cities, Atlanta being intermediate in the case of ocean-and-rail shipments by certain routes.

The prayer is for the establishment of just and reasonable rates from the eastern port cities and interior points to Atlanta and related points; for the condemnation of the rates now in effect as unduly preferential to the Tennessee cities and unjustly prejudicial to Atlanta to the extent that they exceed the rates from the same points of origin to Chattanooga, Knoxville, or Nashville; for the assignment of New York and Philadelphia and presumably Boston to the same rate basis at Baltimore; and finally, as the complaint was modified in the presentation of the case, for the establishment of rates from these eastern cities to Atlanta and related points, not to exceed those in effect or to be prescribed for the several classes and commodities moving from Cincinnati and Louisville to Atlanta and related points. The complainant also desires the abolition of the differentials between the all-rail rates and the ocean-and-rail rates.

The basis on which this complaint stands is chiefly that of mileage. As will be more fully set forth below, the "constructive" distance from Baltimore to Atlanta, ocean-and-rail, is 510 miles. This is but little in excess of the distance from Cincinnati or Louisville to Atlanta, and it is claimed that the rate should be the same from Baltimore to Atlanta as from Cincinnati or Louisville to Atlanta. New York and Philadelphia have the same "constructive" distance as Baltimore, and the complainant asks for the Baltimore rates from both.

It is set forth in the complaint that there are in operation through routes and joint rates from the eastern cities to Atlanta by both all-rail lines and ocean-and-rail lines. The direct routes all-rail are by eastern lines to the Virginia gateways, thence by the southern lines. The short-line distances, in miles, are stated as follows:

To—	From Boston.	From New York.	From Philadel- phia.	From Balti- more.
Atlanta.....	1,089	876	785	628
Chattanooga.....	1,060	847	756	600
Knoxville.....	949	736	645	545
Nashville.....	1,165	952	861	764
Memphis.....	1,370	1,157	1,066	900

Atlanta is thus shown to be only 29 miles farther distant than Chattanooga. Knoxville is, of course, considerably nearer to the eastern cities than Atlanta, while Nashville is more distant.

Traffic moving from the east to Nashville and Memphis is governed by the official classification, while that to Atlanta, Chattanooga, and Knoxville is governed by the southern classification. The all-rail

rates to these points are as follows in cents per 100 pounds, first class only being shown for illustration:

To—	From Boston and New York.	From Philadel- phia.	From Balti- more.
Atlanta.....	117	117	110
Chattanooga.....	105	105	98
Knoxville.....	100	100	95
Nashville.....	91	85	82
Memphis.....	100	94	92

The ocean-and-rail rate to Atlanta is 105, first class, from Boston, New York, and Philadelphia, and 98 from Baltimore. To Chattanooga and Knoxville the ocean-and-rail rates are the same as the all-rail rates. As thus appears, the Tennessee cities are given an advantage in the parity of all-rail with ocean-and-rail rates, while Atlanta is compelled to pay a differential of 12 cents per 100 pounds, first class, on traffic moving all-rail.

It is likewise pointed out that on traffic moving from interior points basing on Boston, New York, Philadelphia, or Baltimore, Atlanta is compelled to pay arbitraries to the ports in addition to the established ocean-and-rail rates, as stated above, while for Chattanooga and Knoxville the rates named from the ports carry also from the interior points. For instance, on shipments moving rail-ocean-and-rail from Worcester, Mass., Schenectady, N. Y., Lancaster, Pa., or Harrisburg, Pa., Atlanta is required to pay an arbitrary to Boston, New York, Philadelphia, or Baltimore, as the case may be, in addition to the ocean-and-rail rate, while for the Tennessee cities the local rate to the eastern port is absorbed in the ocean-and-rail rate. It appears that many of the eastern rail lines have refused to join in through rates, rail-ocean-and-rail, from the interior points in the east to the southeast and, in consequence, the ocean lines and their southern connections have published such rates without the concurrence of the lines leading to the eastern ports. At the same time, however, they make provision to allow the eastern lines their local rates from the points of origin to the respective ports. An extreme instance of the result of this situation is noted in the record. The local rates from Elmira, N. Y., to the port of New York are fixed on a 35-cent scale. Rail-ocean-and-rail rates are in effect from that point on a \$1.05 scale to Chattanooga, or a \$1.13 scale to Atlanta, out of which the local rates, Elmira to New York, must be paid, thus materially reducing the division of the ocean lines and the southern rail lines.

Traffic moving by ocean and rail to these southern points may be transshipped at Norfolk, Charleston, or Savannah. The actual dis-
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tances from Boston to these southern ports are 598, 978, and 1,057 statute miles, respectively. New York and Philadelphia are, of course, somewhat less in distance and Baltimore still less.

In fixing the divisions between the rail lines and the ocean lines, it appears that the ocean mileage to the more southern ports has been reduced to an equivalent in rail mileage on an arbitrary basis of 3 miles for 1. This basis is applied only approximately, however, for as appears in the record the prorating distances by ocean from New York, Philadelphia, and Baltimore to Charleston and Savannah are all fixed alike at 250 miles, while the corresponding distances from Boston to both ports is 300 miles, although the actual distances are shown to vary from 631 miles to 1,057 miles.

Savannah is the nearest of the south Atlantic ports to Atlanta and Chattanooga. The short-line distance Savannah to Atlanta is 260 miles, though it should be noted that this involves three distinct railways. The most direct one-line haul is over the Central of Georgia, a distance of 294 miles, which is most commonly considered the rate-making route. The short-line distance of 260 miles, taken with the arbitrary prorating mileage of 250 miles for the ocean haul from New York, Philadelphia, or Baltimore to Savannah, gives a total of 510 miles, which, as the complainant contends, may fairly be considered to represent in terms of rail mileage the distance from any one of these three eastern cities to Atlanta.

The complainant insists that this total of 510 miles is to be considered as the *rate-making* distance, while the defendants carefully distinguish it as the *prorating* distance. The force of this distinction is not altogether apparent, since if the water lines are willing to accept divisions as for 250 miles of rail haul, Savannah may be considered to be 250 rail miles from New York, Philadelphia, or Baltimore, and Atlanta likewise 510 miles. However, it should be noted that a chief point of the defendants' contention is that the rates from the eastern cities have never been based on mileage, being determined in a large measure by water competition. It may well be admitted that the actual expense of operating a steamer on a voyage will vary substantially in direct proportion to the length of the voyage, but, as it appears, the strenuous competition among the ocean lines operating to the southern ports, together with the availability of many rail lines leading from the ports to the interior, has led to an entire disregard, so far as the divisions of the rates are concerned, of the additional cost of making a voyage from Boston over that from Philadelphia or New York or one to Savannah over that to Charleston. It is shown that the Atlanta rates were originally made differentials over Augusta, which point has always enjoyed the advantage of water transportation by ocean to Savannah, thence by the Savannah River.

is the same from all these ports. An additional argument is advanced in support of this contention to the effect that the ocean lines quote the same rates from New York, Philadelphia, and Baltimore for strictly port-to-port movements. It is shown, however, that this contention is not wholly based upon fact, as the rate from New York and Philadelphia does not include charges for marine insurance while that from Baltimore does, the amounts so included being substantially the same as the Baltimore differentials in the ocean-and-rail rates to Atlanta.

Representatives of the Traffic Bureau of Nashville, the Baltimore Chamber of Commerce, and the Merchants and Manufacturers' Association of Baltimore appeared and submitted briefs as interveners in the Eastern case. As for the Nashville organization, its interest in the case was aroused by the prayer set forth in the complaint that the rates from the eastern points to Atlanta should be established not to exceed those in effect to Nashville, and the contention made in its behalf is, briefly, that the lower scale of rates from the east to Nashville is the result of the advantage in location enjoyed by Nashville, and, in particular, of competition, both actual and potential, by way of the Ohio and Cumberland rivers in the movement of traffic from the east. Apparently the chief purpose of the intervention was to protest against any possible conclusion by which the alleged discrimination between Nashville and Atlanta might be removed by an increase in the Nashville rates to the Atlanta basis. It is pointed out that the complainant does not ask that the discrimination be removed by increasing the Nashville rates, but rather freely admits the reasonableness of the present scale in effect at that point.

As is shown above, the rates from New York to Nashville, all-rail, are established on the 91-cent scale, and a considerable amount of testimony was offered in behalf of this intervener to show that traffic of all kinds from the east to Nashville was actually being handled by rail to Evansville, Ind., or Brookport, Ill., and thence by steamboat on the Ohio and the Cumberland to Nashville at rates considerably lower than those of the all-rail lines. In numerous decisions rendered by this Commission the effect of water competition on the rates from the east to Nashville has been noted, and the evidence in this case indicates an increasing tendency of late on the part of Nashville merchants to take advantage of the rail-and-river routes in the forwarding of their supplies.

It is thus argued that the circumstances attending transportation from the east to Nashville are materially different from those attending transportation from the east to Atlanta. Testimony was introduced to show that Nashville and Atlanta are not, in point of fact, in active competition in the distributing trade.

The ocean-and-rail routes to the southeast were first in the field, and with the advent of the direct all-rail lines were compelled to divide traffic which had formerly been wholly theirs. With the same level of rates via all-rail lines as via ocean-and-rail lines, the water lines found themselves to be losing more and more of their traffic. A differential was established amounting to 8 cents on first class, later increased to 12 cents, on traffic from the ports proper, with a 4-cent scale applying from the interior points. These differential scales are in effect at the present time and their abolition is one of the purposes of this proceeding.

Taking the Central of Georgia as an instance, it is shown that this line, having its connection with the east by the Ocean Steamship Company of Savannah, has uniformly applied the differential rates, the only exception being at Chattanooga, to which point the non-differential basis had already been established when the Central of Georgia extended its lines there.

On the other hand, the lines leading from the Ohio River have contended for the nondifferential basis and, with the support of the Norfolk & Western, have been able to carry this basis down as far as Chattanooga and Knoxville, while the influence of the ocean lines has succeeded in maintaining the differential basis as far from the ocean as Atlanta, Birmingham, Montgomery, etc.

It is claimed by the defendants that the discrimination in favor of Chattanooga and the other Tennessee cities in consequence of this differential is more apparent than real, since the bulk of the shipments from the east to Atlanta move by ocean and rail. A tabulation made covering shipments from the east to Atlanta for a period of 14 days shows that from the port cities proper more than 90 per cent of the traffic moved by ocean and rail. From the interior eastern points, as might be expected, the all-rail lines carried a larger proportion of the traffic, somewhat over 60 per cent going by ocean and rail. More than three-fourths of the entire traffic from eastern points to Atlanta was handled by the ocean-and-rail lines.

The discrimination in favor of the Tennessee cities with respect to the rail-ocean-and-rail rates from the interior eastern points is likewise justified on the basis of the influence of the direct rail lines leading from the points of origin to the southeast, both by way of the Ohio River and by way of the Virginia gateways. The farther one goes from the port, the longer the additional haul by the rail-ocean-and-rail lines and, generally speaking, the shorter the all-rail haul; and the rail lines compete more actively for the business.

As is noted above, one branch of the case looks to the establishment of the same scale of rates from all the eastern ports. This is supported in part by the consideration that the prorating mileage basis

is the same from all these ports. An additional argument is advanced in support of this contention to the effect that the ocean lines quote the same rates from New York, Philadelphia, and Baltimore for strictly port-to-port movements. It is shown, however, that this contention is not wholly based upon fact, as the rate from New York and Philadelphia does not include charges for marine insurance while that from Baltimore does, the amounts so included being substantially the same as the Baltimore differentials in the ocean-and-rail rates to Atlanta.

Representatives of the Traffic Bureau of Nashville, the Baltimore Chamber of Commerce, and the Merchants and Manufacturers' Association of Baltimore appeared and submitted briefs as interveners in the Eastern case. As for the Nashville organization, its interest in the case was aroused by the prayer set forth in the complaint that the rates from the eastern points to Atlanta should be established not to exceed those in effect to Nashville, and the contention made in its behalf is, briefly, that the lower scale of rates from the east to Nashville is the result of the advantage in location enjoyed by Nashville, and, in particular, of competition, both actual and potential, by way of the Ohio and Cumberland rivers in the movement of traffic from the east. Apparently the chief purpose of the intervention was to protest against any possible conclusion by which the alleged discrimination between Nashville and Atlanta might be removed by an increase in the Nashville rates to the Atlanta basis. It is pointed out that the complainant does not ask that the discrimination be removed by increasing the Nashville rates, but rather freely admits the reasonableness of the present scale in effect at that point.

As is shown above, the rates from New York to Nashville, all-rail, are established on the 91-cent scale, and a considerable amount of testimony was offered in behalf of this intervener to show that traffic of all kinds from the east to Nashville was actually being handled by rail to Evansville, Ind., or Brookport, Ill., and thence by steamboat on the Ohio and the Cumberland to Nashville at rates considerably lower than those of the all-rail lines. In numerous decisions rendered by this Commission the effect of water competition on the rates from the east to Nashville has been noted, and the evidence in this case indicates an increasing tendency of late on the part of Nashville merchants to take advantage of the rail-and-river routes in the forwarding of their supplies.

It is thus argued that the circumstances attending transportation from the east to Nashville are materially different from those attending transportation from the east to Atlanta. Testimony was introduced to show that Nashville and Atlanta are not, in point of fact, in active competition in the distributing trade, it being said that

Nashville wholesalers and jobbers in various lines have to meet the competition of St. Louis, Cincinnati, and other Ohio River cities, Chattanooga, etc., but not of such points as Macon, Atlanta, or cities in the Carolinas or Virginia.

The Baltimore organizations protest against the granting of the complainant's prayer to have all the eastern port cities placed upon the same rate basis for traffic moving to Atlanta whether by ocean-and-rail or by all-rail routes. No objection is advanced to the granting of the prayer for lower rates from Baltimore to Atlanta, but it is maintained that the application of the Baltimore rates to shipments moving from New York would cause serious damage to the trade with the south which has been developed by the manufacturing and mercantile interests of Baltimore.

In supplying the demands of trade in the southeast the manufacturers and jobbers of Baltimore purchase goods of various descriptions in New York and New England, and it is even said that foreign goods are in large measure imported through New York, so that on much of their business the Baltimore dealers are obliged to pay the transportation charges from the north to Baltimore in addition to the usual rates to the south; for instance, on first class the rate New York to Baltimore is 34 cents per 100 pounds by the rail lines, or 30 cents by the water lines. Adding the 98-cent ocean-and-rail rate Baltimore to Atlanta, it appears that the total transportation charges on goods handled through Baltimore is at least \$1.28 per 100 pounds, compared with the rate of \$1.05 ocean-and-rail which New York now has. The Baltimore dealer is thus placed at a disadvantage, and of course protests against an increase in this disadvantage which would result from the establishment of equal rates from New York and Baltimore. It is likewise feared that the abolition of the coastwise differentials in the rates to Atlanta will necessarily be followed by corresponding action with reference to the rates to the Carolinas and the remainder of the southeastern territory.

Statements are made that the bulk of Baltimore traffic by water and rail to the southeast goes by the port of Norfolk, as that furnishes the shortest and most direct routes to the interior points. It may be noted in this connection that the prorating mileage New York, Philadelphia, and Baltimore to Norfolk is estimated on the basis of 2 miles for 1 instead of 3 for 1, as in the case of the more southern ports. The prorating distance Baltimore to Norfolk by water is therefore 100 miles, and from New York and Philadelphia 160 miles.

Opinions of the Commission are cited with reference to the recognition of Baltimore's geographical location in the fixing of scales of rates at established differentials lower than other port cities. These

differentials have been before us in cases relating to traffic to and from Chicago and the west in general. We have approved a scale of differentials for Baltimore under New York, beginning with 8 cents on first-class on traffic moving to and from the west. The present Baltimore differentials on Atlanta traffic are on a 7-cent scale, which doubtless may be considered reasonable in view of the fact that Baltimore's advantage of New York with respect to western traffic is but 111 miles, while for southern points Baltimore has an advantage of 187 miles under New York and 92 miles under Philadelphia. The absence of differentials between Philadelphia and New York and Boston is noted and is explained as the result of competition at those points.

While in the Western case we found one of Atlanta's contentions fully supported, we can not say as much regarding the Eastern. That feature of the Eastern case which carries with it the greatest appearance of injustice to Atlanta loses its appearance of injustice upon a close examination into the situation. We refer to the absorption of the rate to the ocean in the case of shipments to Chattanooga and the failure of the carriers to do so on shipments to Atlanta. It is obvious that here we have a survival of competition which compels the absorption of the rail charge to tidewater on business destined to the Tennessee cities, while it is possible to secure similar rail-ocean-and-rail business from the north Atlantic states to Atlanta without making this absorption. If this absorption were the result of the arbitrary action of carriers subject to the act, we should promptly declare it to be unjust discrimination against Atlanta and condemn it; but we are not persuaded that it is anything else than the result of legitimate competition, to the advantages of which the Tennessee cities are properly entitled.

With respect to the other features of the complaint in the Eastern case, while ably and strongly urged, we are likewise convinced that Atlanta has no just cause for complaint. An order of dismissal will be entered.

IN THE MATTER OF FREIGHT BILLS.

Decided February 2, 1914.

The form of freight bill approved by shippers and carriers in conference with representatives of the Commission approved and its general use by carriers recommended.

Robert E. Quirk for Interstate Commerce Commission.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Numerous informal complaints as well as our general experience with the matter having given us reason to believe that the carriers have failed to establish, observe, and enforce just and reasonable regulations and practices affecting the issuance of freight bills and receipts, this investigation and inquiry was instituted by the Commission on its own motion. Its purpose was to determine whether the present rules, regulations, and practices of carriers in regard to freight bills embrace any unjust, unreasonable, discriminatory, preferential, or otherwise unlawful features, and to determine more particularly whether freight bills or receipts, when presented to the consignee, should show on their face information respecting the shipments covered thereby as follows:

(1) The point of origin; (2) the date of shipment; (3) the weight of the shipment; (4) the route, including the name or initials of each carrier participating in the haul and the junction points through which the shipment moved; (5) the initials and number of the car; (6) an adequate description of the property transported; (7) the rate or rates applied for the service; (8) a statement of the nature, amount, and point of accrual of each item of charge for stop-in-transit, reconsignment, switching, car service, storage, and any other charge incident to the transportation; (9) the name of the consignor and the date of arrival at destination.

Freight bills may be said to have three functions, namely, (a) to serve as a receipt to the consignee or consignor and as prima facie evidence of the payment of the transportation charges; (b) to serve as a receipt to the carrier and as prima facie evidence of the delivery of the property; and (c) to serve as a notice to the consignee of the arrival of the shipment. In addition to these defined functions the freight bill has other uses. It is often a means of identifying the shipment, and to this extent the name of the shipper is frequently

essential in effecting prompt delivery. It is also used extensively as a record. The purpose of the inquiry was to ascertain whether in any of these respects the present practices of carriers are defective and have any unlawful consequences and, if so, to take such action as might be authorized by law for the establishment of other and more perfect rules and regulations respecting the form and use of freight bills.

Shortly after the order of inquiry was entered, the Commission was advised that the carriers themselves, through the American Railway Association and the Association of American Railway Accounting Officers, and for the purpose of arriving at an understanding as to an improved form of freight receipt, had voluntarily taken up the matter with shippers represented by the National Industrial Traffic League and with others. As the result of these joint deliberations and of informal conferences between the Commission and these representatives of carriers and shippers a standard form of freight bill has been agreed upon and is now presented to the Commission for its action. The form is so prepared as to require carriers to show all the information suggested for consideration in the order instituting the inquiry.

No question has been made of the right of the Commission under section 20 to prescribe by proper order the form and substance of freight bills and require their use by carriers. But in view of the apparent general consensus of opinion among both carriers and shippers as to the information that ought to appear on a freight bill we think it will suffice at this time simply to express our approval of the proposed form, and also to say that we think it a proper form and one that carriers should at once adopt. It is obviously the duty of carriers in rendering a bill for transportation service to state thereon such information as will enable the consignor or consignee with the aid of the published tariff to verify the correctness of the charges which he is called upon to pay. A freight bill should also show the point of origin, the date of shipment, its weight, the route of movement (this being shown by indicating each carrier participating in the haul and the junction points through which the shipment moves), the initials of the owning carrier and the number of the car, an adequate description of the property carried, the rate or rates applicable to the service rendered, and a statement of the nature, amount, and points of accrual of each item or charge for stoppage in transit, reconsignment, switching, drayage, car service, storage, or other charge incident to the transaction. We are convinced that the adoption by all carriers of such a form will go far toward establishing uniformity, simplicity, and certainty, and that its general use will remove much of the confusion now existing and will minimize the irregularities and injustices which have heretofore occurred.

There is one feature in the situation that requires some consideration and which apparently was not discussed in the conferences between the shippers and the carriers. We refer to that clause in section 15 of the act which makes it unlawful for a carrier to disclose any information concerning—

the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such carrier for interstate transportation when that information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor.

In *Conference Ruling 356* we held it to be unlawful for a carrier to disclose to the shipper the name of the ultimate consignee of a shipment reconsigned in transit by the original consignee. Certain large shipping interests, upon the record before us, contend that it is also unlawful for a common carrier to disclose to the ultimate consignee the name of the original consignor of a shipment reconsigned in transit by the original consignee. If we stand upon the precise language of the clause above quoted, it is not altogether clear that the law is definite enough to justify the latter construction; but in *Albree v. B. & M. R. R.*, 22 I. C. C., 303, 321, we have broadly held that the act indicates an intent upon the part of the Congress to secure to every shipper immunity from a disclosure of his business at the hands of a common carrier. We still regard this as a sound view of the law and as the construction to which carriers should adjust their practices.

The form agreed upon in the conferences between the carriers and shippers as above explained, and which we now approve, is shown on the opposite page.

We earnestly recommend the use by all the rail lines of the form here approved, but we shall hold the record open for further investigation upon the suggestion of the carriers or shippers affected by it and for such further action as may appear advisable.

29 I. C. C.

Accountants' Association Standard Form 123 (revised 1913).

FREIGHT BILL.

..... STATION 191..

CONSIGNEE.....FREIGHT BILL No.....

DESTINATION.....

ROUTE.....

(Point of origin to destination.)

To ----- R. R. Co., DE., for charges on articles transported:

WAY-BILLED FROM	WAY-BILL DATE AND NO.	FULL NAME OF SHIPPER	CAR INITIALS AND NO.
POINTS AND DATE OF SHIPMENT	CONNECTING LINE REFERENCE	PREVIOUS WAY-BILL REFERENCES	ORIGINAL CAR INITIALS AND NO.

NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	TOTAL
<p>SIZE: 5½ x 8½ inches</p> <p>NOTE:—This freight bill is spaced and ruled for typewriter use but can be readily adapted to use with indelible pencil. When to be used with pencil, horizontal lines may be added if considered desirable.</p> <p>*TOTAL PREPAID \$.....</p>					

RECEIVED PAYMENT.....191.. TOTAL,.....

.....AGENT

*For use at junction points on freight subject to connecting line settlement.

[On reverse of freight bill.]

RULES.

1. This form must be prepared with typewriter, pen, or indelible pencil; all information called for to be shown in full and in a clear and legible manner.
2. Weight, rate, and charges must be shown in detail for less carload shipments.
3. Demurrage, switching, icing, or other miscellaneous charges not included in the rate for transportation must be stated in detail, and the points at which such charges accrued shown.
4. When charges are assessed on track scale weights, gross, tare, and net weights on which charges are based and name of weighing station must be shown.
5. The route over which the shipment moved from point of origin to destination, including the initials of each carrier and name of each connecting line junction point, must be shown.
6. Overcharges will be refunded only on presentation of original paid freight bills.
7. Original paid freight bills should accompany claims for overcharge, loss, or damage.
8. All freight will be subject to demurrage or storage charges, or both, as provided in published tariffs.

29 I. C. C.

No. 4743.
C. PARDEE WORKS
v.
CENTRAL RAILROAD COMPANY OF NEW JERSEY
ET AL.

Submitted October 1, 1912. Decided February 2, 1914.

Rates on scrap iron and steel billets from New England territory to Perth Amboy not found to be unreasonable or unduly preferential.

McLanahan & Burton and *A. B. Hayes* for complainant.

H. J. Hart and *S. S. Perry* for New York, New Haven & Hartford Railroad Company, Boston & Maine Railroad, and Maine Central Railroad Company.

W. S. Kallman for New York Central & Hudson River Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainant in this proceeding is engaged in the manufacture of steel billets, bars, and other iron and steel articles at Perth Amboy, in the state of New Jersey, and in the process uses scrap iron as a raw material. The complaint alleges that the rates on this material from New England points to Perth Amboy and on steel billets and bars from that point to New England territory are unreasonable *per se* and unduly preferential of strongly competitive plants in eastern Pennsylvania.

For the purpose of making rates on iron, steel, and scrap iron the territory included in this controversy is divided into groups, namely, western Pennsylvania, which includes the city of Pittsburgh, central Pennsylvania, eastern Pennsylvania (which extends from the Susquehanna River to the Atlantic seaboard), and New England. The complainant's plant at Perth Amboy is situated within the boundaries of the eastern Pennsylvania group. There is also a Buffalo group, the limits of which are not shown. The New England group, otherwise known as Boston territory, includes all points on the Boston & Albany and Boston & Maine railroads between the Hudson River and Boston, and also all stations on the line of the New York, New Haven & Hartford Railroad, with the exception of a few in the immediate vicinity of New York City. This group extends as far north as Plymouth and Wilder, in the state of New Hampshire, and

eastward to Portland, in the state of Maine. Intermediate between the New England and the eastern Pennsylvania groups is the so-called metropolitan district, which includes New York City and the territory in New Jersey adjacent thereto. In order to reach the New England group from Perth Amboy and other points in the eastern Pennsylvania group, a transfer by car ferry is required of approximately 10 miles in length, and the complainant alleges that in making rates to New England points the carriers use an arbitrary mileage of 100 miles for this transfer around New York.

The rates applying to New England points on the manufactured product and from points of origin in that group on scrap iron are as follows:

	Billets, per gross ton.	Bar steel, per 100 pounds.		Scrap iron, per gross ton.
		C. L.	L. C. L.	
Pittsburgh.....	\$3.00	\$0.18	\$0.21	\$3.09
Central Pennsylvania.....	2.70	.16½	.19½	2.70
Eastern Pennsylvania.....	2.30	.13½	.16	2.30

The rates on iron and steel and on scrap iron between New England and all points in the eastern Pennsylvania group, including Perth Amboy, are the same, and it is the contention of the complainant that these groups each cover too much territory and that under the arrangement in effect Perth Amboy does not receive its advantage of location over competitors in reaching the New England trade with its finished product, nor in gathering its scrap from that territory. It is obvious, however, that a breaking up of the New England zone into two or more groups, as suggested by the complainant, would not in any way change the situation as regards Perth Amboy, because if no change were made in the eastern Pennsylvania group the rates to and from Perth Amboy would still remain the same as those of its principal competitors, the majority of whom are situated in that group. Nor, for the same reason, would any benefit accrue to Perth Amboy by a reduction in the arbitrary mileage for the ferry service across New York harbor.

The rate structure here attacked is said to have been established 15 years ago, and during its existence no complaint has been made until this complainant entered its protest to the rail lines some three or four years ago. It is now claimed that Perth Amboy is discriminated against, and that the rates are unreasonable because the New York, New Haven & Hartford Railroad receives a higher return per ton-mile on shipments originating at or destined to Perth Amboy than it receives in the divisions of the through rate on similar shipments to or from the plants of the complainant's Pennsylvania com-

petitors. Exhibits attached to the complaint set out in detail the rates and mileages from each of the producing points complained of to the various consuming points in New England, together with the divisions which it is alleged each carrier receives and the per ton-mile earnings of each of the lines. Assuming the divisions set out in the exhibits to be correct, it seems that the carriers, after settling upon the through rates to be applied between the groups, have arranged to divide the earnings so that each will receive the same rate per ton-mile, but divisions thus arrived at can not be considered as forceful evidence of an unreasonable rate. We have many times indicated that when the charges are reasonable the division of the rate between the carriers participating in the service is not usually of special interest to the public although in some cases the divisions may have controlling significance.

From the compilations of the complainant it appears that the average distance from the producing points in the eastern Pennsylvania group to the average destination in New England is 412.2 miles, and that the average revenue per ton-mile on steel billets between these points is 5.6 mills, whereas the rate per ton-mile from Perth Amboy to the average New England point is 8 mills, the distance being 287.2 miles. This rate comparison is illustrative of the evidence offered by the complainant throughout the case to show the unreasonableness of the rate from Perth Amboy. No recognition is given to the principle that the per ton-mile earnings should decrease as the distance increases. The record does not show the relative earnings into New York state from Perth Amboy and from points near the western limits of the eastern Pennsylvania group, but it is admitted that to such destinations Harrisburg and Lancaster fail of advantage relatively with Perth Amboy in the same way that the latter is affected as to New England markets.

The complainant asserts that because of the present adjustment of freight rates its plant, prior to 1910, was operated without profit, and during the years 1910 and 1911 it received a return on its investment of but 2 per cent; also, that much of the raw material used in the manufacturing process must be drawn from sources of supply that are nearer to the plants of its competitors in eastern Pennsylvania, thus making the cost of manufacture higher. This fact and its proximity to New England it contends justify lower rates on its finished product to that market. It does not follow, however, that a company may with propriety seek the establishment of lower rates on its articles of manufacture because it is not in a prosperous condition or because the cost of assembling its raw material may be greater than that of its competitors.

This proceeding is not before us in any such broad way as could permit of a finding with relation to the reasonableness of the present

rate adjustment. It may well be that the earnings per ton-mile from Perth Amboy to New England destinations seem high when compared with those accruing on traffic originating nearer the opposite limit of the eastern Pennsylvania group, but certainly the mere statement that the rates from Perth Amboy yield an average return of 8 mills per ton-mile is not sufficient to lead us to condemn them as unreasonable. Under all the circumstances we are not prepared to find that the rates from Perth Amboy to New England group points on billets and steel bars are unreasonable, nor are we sufficiently informed as to pass upon the reasonableness of the rates applicable to scrap iron from points of origin in New England to Perth Amboy. We do find, however, that no discrimination exists in the rates between Perth Amboy and New England against the complainant and in favor of its competitors located in the same rate group.

As shown heretofore, the same rate applies on billets as on scrap iron, and a higher rate is used to move the steel bars. Billets are the first product of manufacture and are of a lower value than the more highly manufactured steel bars. They are said to be of a value approximately twice that of scrap iron, and because of this difference in value and from the fact that the latter loads to about the same weight, the complainant contends that the same ratio should apply between those commodities as the carriers have settled upon in the ratio between billets and bars. Carriers, because of their common-law liability, commonly recognize in their rates differences in the value of articles transported, but it is affirmatively shown on the record that the element of loss and damage in this case is negligible as to both commodities. It does not appear that there is any other element in rate making which would warrant a distinction in the rates.

Upon consideration of all the facts of record in this proceeding we are of the opinion that the complaint is without merit and must therefore be dismissed. It will be so ordered.

20 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 172.
PROTECTION OF POTATO SHIPMENTS IN WINTER.

Decided February 2, 1914.

A tariff that offers a protected service, in special equipment, for shipments of potatoes in winter at the risk of the carrier for weather damages and at the same time permits the shipper, at a lower rate and at his own risk, to furnish his own protection, found to be free from reasonable objection.

George T. Simpson for Minneapolis Potato Growers' and Shippers' Association.

J. E. Robinson for Albert Miller & Company.

Charles Donnelly and *J. M. Hannaford* for Northern Pacific Railway Company.

E. C. Lindley and *Carl Grey* for Great Northern Railway Company.

F. P. Eyman for Chicago & North Western Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In our original report in this proceeding, 26 I. C. C., 681, we had under consideration the suspension of certain rules governing the transportation of potatoes during the winter season, when protection against freezing is required. At the time the matter was before us the shipping season was practically over, and we entered no order permanently suspending these rules, but requested that conferences be had between the carriers and the shippers, with a view to arriving at a satisfactory arrangement respecting the methods to be adopted for handling the traffic in the future. These conferences failed to bring about the desired result, and an opportunity was then given both parties to present their views fully before the Commission. The whole matter is therefore before us again for final decision.

The rules complained of in the original proceeding, briefly stated, involved provisions substantially as follows:

1. That the carriers will not accept shipments of potatoes during the period from November 1 to April 15 unless the shipper at his own expense lines the car, puts in a false floor, and furnishes a stove and fuel for heating, with an attendant to accompany the shipment. The right is reserved to the carrier, however, of accepting such shipments "when, in its judgment, the weather conditions permit."

2. That the attendant in the employ of the shipper will have full supervision of the heating and ventilation of the shipment, and shall be responsible for the care and protection of the potatoes from cold while in transit.

3. That the stoves and material for linings and false floors will be returned free of charge over the route of the original movement only when the material is delivered by the consignee, or by a representative of the shipper, at the depot of the delivering carrier at destination and a regular bill of lading is issued for the free return movement.

Upon consideration of the matter as originally presented, we expressed the opinion, 26 I. C. C., 681, 684, that the traffic is large enough not only to warrant the carriers in preparing for it with the proper equipment for its safe transportation, but large enough and permanent enough to require them under the law to offer such a service to the shippers. The rules then published, however, did not appear to us to be entirely just and equitable, but were open to criticism in the following respects: That the carriers, when making the shipper responsible for the care and protection of potatoes from cold while in transit, should not also reserve the right to refuse shipments when the shippers were willing to accept the risk of weather conditions; and that some way should be found by the carriers to avoid the economic waste involved in the fact that the linings and even the stoves, furnished by the shippers for the protection of their shipments, were often not returned to them.

Having failed to reach a satisfactory conclusion at the conferences subsequently had between the carriers and the shippers, as suggested in our previous report, the carriers proceeded to frame a tariff in accordance with what they conceived to be the suggestions outlined in our report. The clause in the original tariff, under which they reserved the right to refuse shipments, was eliminated from the subsequent issue, and in that respect one of the objections mentioned was overcome. Realizing also their obligation to furnish a protected service for the traffic, they incorporated in their tariffs a rule offering such a service in refrigerator cars at rates made with reference to those found reasonable in *Boston Potato Receivers' Asso. v. B. & A. R. R. Co.*, 25 I. C. C., 159. As an alternative to this method of handling the traffic at the risk of the carriers for the adequacy of the protection, the new rules permitted the shippers to continue to furnish their own protection at their own risk.

The tariff, as amended, met with decided objection on the part of the shippers, principally for the following reasons: (1) That the responsibility for loss or damage would lie with the shippers if they elected to furnish their own protection. (2) That the provision regarding the return of stoves and linings was not modified in accordance with the suggestion of the Commission but placed obligations upon the owners of those appliances that were difficult or impossible of fulfillment. (3) That the absolute requirement of the carriers that during certain periods of the year shipments of potatoes must

have an attendant and the cars be lined and heated was unnecessary and unreasonable. (4) That the tariffs did not provide for the return of the attendant at any point short of destination. (5) That a charge of \$5, provided for rental of refrigerator cars when such equipment was ordered by the shipper, placed the shippers at an expense which was not contemplated when they made their contracts for the sale of the present crop.

With a view of effecting a satisfactory compromise and one which would in part, at least, overcome these objections of the shippers, the carriers subsequently submitted for their consideration a proposition substantially as follows: (1) That the tariffs would not be published in the alternative, but would provide that the shippers furnish the protection at their own risk of damage. (2) That the carriers would be responsible for the rebilling of stoves and linings to the shipper. (3) That the shipper should have the option at any time to forward shipments without protection, upon first signing a release absolving the carrier from any responsibility for loss due to the absence of attendants, heating, and lining. (4) That provision would be made whereby the attendants could secure return transportation at any division point or point of interchange with other carriers. (5) That the \$5 charge for rental of refrigerator cars would be withdrawn, for the present season at least.

This offer was rejected by the shippers, on the ground, plainly brought out at the conference before the Commission, that it was unreasonable to place upon them any liability for weather damage, whether due to their own inadequate protection or otherwise. The carriers refused to recede from their position in that regard, and the principal point at issue, therefore, is whether they may thus limit their responsibility for damage to shipments of potatoes moving in box cars lined and protected by the shipper himself and under a rate that is less than that exacted when the carriers furnish special equipment and assume the risk of weather damages.

We said in our prior report herein that the obligation rests upon the carriers to furnish special equipment or a special service to care for the traffic in question, and upon this expression of opinion the carriers published the alternative rule objected to by the shippers. Under that rule they offer a protected service at rates which they considered justly compensatory, in view of the character of the service and the liability involved for loss and damage resulting from inadequate protection; at the same time they proffer the shipper the alternative right, at a lower charge, to furnish this protection for himself upon releasing the carrier from liability. To our mind, no reasonable objection may be advanced against the publication in a tariff of an alternative provision of that nature. In fact,

no method seems to be open to the carriers to avoid claims for damages, arising from the freezing of potatoes in winter, except by offering a protected service at reasonable rates and under their own full responsibility for the results, giving the shipper at the same time the right, without additional charge, to assume the liability himself by providing his own protection, the carriers to remain liable, of course, for any loss or damage resulting from their own negligence. Under the Carmack amendment to section 20 of the act to regulate commerce no contract, receipt, rule, or regulation may exempt a carrier from liability for any loss or damage caused by it or any carrier over whose lines the property may pass. This amendment, however, does not prohibit the carriers from entering into reasonable contracts with the shippers for a release from liability as an alternative to other tariff provisions under which the carriers will accept this responsibility themselves. In *M., K. & T. Ry. Co. v. Harriman*, 227 U. S., 657, at p. 672, it is said that:

The liability imposed by the statute is the liability imposed by the common law upon a common carrier, and may be limited or qualified by special contract with the shipper, provided the limitation or qualification be just and reasonable, and does not exempt from loss or responsibility due to negligence.

The alternative rule suggested by the defendant carriers and now published in a tariff on file with this Commission, is, in our opinion, fair and reasonable, in that it allows the shipper a choice between shipping his traffic at a lower rate under a special contract by which he becomes his own insurer against weather loss and damage or of making his shipments under terms imposing the full responsibility upon the carrier. The carriers, in the wording of the provision, should make it plain, however, that they will not seek in any event to escape responsibility for loss occasioned by their negligence or delay in the movement of the shipment.

With the principal objection of the shippers thus disposed of, the existing tariff when modified to meet the views here expressed, and preserving, of course, the alternative rule, will afford a reasonable and satisfactory basis, in our judgment, for the transportation of this perishable commodity.

No 933.

**ST. PAUL AND PUGET SOUND ACCOUNTS.
IN THE MATTER OF RATES, PRACTICES, ACCOUNTS,
AND REVENUES OF CARRIERS SUBJECT TO THE
ACT TO REGULATE COMMERCE.**

Decided February 9, 1914.

Serious irregularities in the accounts of the Chicago, Milwaukee & St. Paul Railway Company, and of its subsidiary, the Chicago, Milwaukee & Puget Sound Railway Company, described, criticized, and condemned.

James W. Carmalt for Interstate Commerce Commission.

Burton Hanson for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The purpose of this proceeding is sufficiently indicated by its general title. It was instituted as a basis for the formal investigation, from time to time as circumstances might require, of the failure of carriers subject to our jurisdiction to follow and obey our accounting classifications and otherwise to comply with the accounting rules and regulations heretofore prescribed by the Commission for interstate carriers. The accounting practices of the Chicago, Milwaukee & St. Paul Railway Company and of the Chicago, Milwaukee & Puget Sound Railway Company are the first to come under our observation since the inquiry was instituted.

Before stating the facts respecting the accounts of these two companies, as developed upon the record, it seems proper briefly to review the circumstances that led the Congress to delegate to this Commission authority to deal with the accounting practices of interstate carriers and to explain the successive steps in the development of that authority as it is now embraced in section 20 of the act.

As originally enacted the act to regulate commerce required interstate carriers to file annual reports with the Commission covering specifically defined items. It also provided that the Commission, in its discretion, might prescribe a uniform system of accounts for carriers subject to its jurisdiction. But the act contained no provision for the enforcement of the orders of the Commission in such matters. This defect was remedied by the amendments of 1906, which not only prescribed penalties for the violation of the rules and regulations of the Commission but established a process by mandamus

for enforcing our orders. It also provided for a force of examiners having authority to inspect the accounts, records, and memoranda of carriers. This gave to section 20 a vitality that was theretofore lacking and put the Commission in a position effectively to administer the law respecting the accounts of interstate carriers.

Beginning with the year 1888 the steam railroads were required to render annual statistical reports of their operations on blanks provided for the purpose by the Commission. So far as mere form was concerned these reports were therefore uniform. They did not inspire public confidence, however, because the Commission, as just stated, was then without effective authority for the enforcement of any accounting rules had such rules been promulgated. It is true that classifications of operating expenses were issued in 1888 and reissued in revised form in 1892. There was also a classification of expenditures for construction. But those classifications were not issued under order, and all the Commission could do to secure their observance was to request the carriers to comply with them in order, so far as possible, to secure uniformity in their reports to the Commission.

Immediately after these defects in the act were corrected by the Hepburn amendments of 1906, the Commission entered actively upon the work of formulating a system of accounts for steam railroads. The cooperation of the railroads through their association of accounting officers was enlisted, and the result was that three important classifications were issued under an order of the Commission on June 3, 1907, to become effective on July 1 following. These were the classification of operating expenses, the classification of operating revenues, and the classification of road and equipment expenditures.

It is not our purpose here to discuss the principles underlying these classifications. It will suffice to say that one of the points in greatest need of regulation from an economic point of view, as disclosed by the previous delinquencies in the accounting of railroad companies, was the drawing of a correct line between expenditures for property and expenditures for operation. The need of such a distinction in railroad accounts is elementary; nevertheless, all students of railroad economics are well aware of the fact that, prior to 1907, when the Commission was given real power to control such matters, the accounts of carriers in many cases were influenced more by other considerations than by a desire to reflect the actual facts. A financially strong road making large net earnings would not hesitate to conceal the facts by adding to its operating-expense accounts sums disbursed in improving its property; on the other hand, a financially weak road, seeking to enhance its credit by a good showing of operating results, would include in its property accounts sums expended

in operation. The result was that a carrier's annual and monthly statements of net revenue often reflected nothing more than the particular showing desired by its executive. These reports were often used for speculative purposes, and the stockholder and the general public were left without any assurance as to whether the dividends declared were paid from income or surplus or out of capital.

A correct statement of the property account of a carrier is of scarcely less importance than a correct statement of its expenditure for operation. It is our understanding that prior to 1907, when the Commission had no efficient control over such matters, the accounts representing the cost of road of many steam railway companies had substantially no real significance, except as they demonstrated the utter disregard of all accounting principles. As a rule they represented neither investments nor assets. Although described as "cost of road and equipment," they frequently bore no relation whatever to cost. They often included, at par value, large amounts of stock issued as premiums to promoters and investors in bonds or held in the treasury of the issuing company, in the hope that the future growth of the company's traffic, or the exigencies of corporate control, might give them some value. But in promulgating its classification of expenditures for road and equipment in 1907, at which time the Commission was first given effective authority to prescribe a system of accounts and to enforce its observance, the fundamental rule laid down by the Commission was that all entries in the accounts of a carrier under that head should be in terms of cash only, thus showing what it cost to create the property at 100 cents on the dollar. The general basis for the rule was that a correct statement of the investment is the beginning of correct accounting; and this sound principle gives us a balance-sheet statement of cost that is a record of the actual investment.

Recognizing the value of the accounting rules promulgated by the Commission, as well as the benefit of some supervision over their accounts through official agencies, practically all the carriers subject to the act have yielded a cheerful acquiescence in our classifications and regulations and have adjusted their accounts in substantial obedience to their requirements. The spirit of cooperation with us in this work and a recognition by the carriers of the true functions of proper accounting are becoming increasingly manifest. This general statement, however, involves some exceptions. There have come to the knowledge of the Commission several instances of serious departures from our accounting regulations, some of which are so important as to require our attention in this proceeding. The first of these instances since this inquiry was instituted arose upon our examination of the accounts of the Chicago, Milwaukee & St. Paul

Railway Company, and of its subsidiary, the Chicago, Milwaukee & Puget Sound Railway Company, hereinafter respectively referred to for convenience as the St. Paul Company and the Puget Sound Company.

In 1905 the St. Paul Company commenced the construction of a line to the Pacific coast, extending from a point in South Dakota on the Missouri River to Seattle, a distance of 1,400 miles. It intersects the Northern Pacific at a number of points and traverses much of the territory occupied by that line. By availing itself of the services of the Northern Pacific for the transportation of materials, the St. Paul Company was therefore enabled to carry on the construction of the new line from several different points at the same time, thus greatly facilitating and expediting the work. Portions of the new line were in operation and commercial traffic was moving over them in substantial volume early in the year 1908. The entire main line was opened for traffic on August 1, 1909. During the period of construction and between the years 1906 and 1909, inclusive, the St. Paul Company transported men and materials for the construction of the new line. It also advanced the funds for construction, amounting on January 1, 1909, to about \$82,000,000. Under the accounting rules of the Commission the St. Paul Company was permitted to include in its accounts a proper revenue for such transportation, rents for equipment and other of its facilities used in the construction of the Puget Sound, and interest on the funds advanced. This should have been done from month to month and from year to year as the service was performed and the funds so made available to the Puget Sound Company. That course, however, was not pursued. On the contrary, the St. Paul Company included in its income accounts for the year 1910, all the interest, rents, and revenues assignable to the period prior to July 1, 1909, the sum total amounting to over \$4,600,000. In the same year it also decreased its operating-expense accounts by crediting thereto more than \$500,000 on account of salvage from cars destroyed previous to the year 1907. By means of these entries the income of the Chicago, Milwaukee & St. Paul Railroad Company for the year 1910 was overstated by more than \$5,000,000.

As the result of this overstatement of income for the fiscal year ending June 30, 1910, the report of the St. Paul Company for the succeeding year showed an apparent falling off in revenue and income as compared with the previous year of over \$2,000,000. In its report to its stockholders for the latter year the explanation offered by the officers of the company was that—

the large decrease in the net operating revenue is accounted for by the inability to obtain increased rates and the great increase in the cost of labor.

This statement was not in accordance with the facts in the case. Had the income for the year 1910 been properly reported the net income for the following year instead of showing a decrease would have shown an increase of about \$2,800,000 over the net income for the fiscal year ending June 30, 1910. The reference to "the great increase in the cost of labor" was no less at variance with the real facts. In its report to this Commission for the year ending June 30, 1910, the St. Paul Company, under the heading "employees and salaries," shows the following tables:

Number of employees June 30, 1910, excluding general officers...	56,658
Total yearly compensation.....	\$30,998,418.73
Average daily compensation.....	\$2.23

The report for the fiscal year ending June 30, 1911, gives the corresponding statistics for that year, as follows:

Number of employees June 30, 1911, excluding general officers...	48,093
Total yearly compensation.....	\$30,942,724.10
Average daily compensation.....	\$2.27

So far, then, from being an increase in the expenditures for labor during the fiscal year 1911, the expenditures on that account were about \$50,000 less than in the previous year, according to the company's own reports to the Commission.

These departures from what were the actual facts are sufficiently serious to merit the strongest condemnation. The delinquencies in the accounting of the Puget Sound Company are, however, of even greater significance. The construction of this line was generally regarded as a notable project and its progress attracted wide attention. The outcome of the enterprise, in respect of the financial returns to the parent company from its operations, was also a matter of both general and special interest, for a showing of profit from its operations could not fail to enhance the credit of the parent company. A large traffic was offered to the Puget Sound line as soon as it was opened, and the evidence before us leads us to think that a correct showing of the operating results for the first year would have been most satisfactory. Not content, however, with a statement of the facts, the income of the Puget Sound was greatly overstated, a variety of expedients having been resorted to for this purpose:

As we have heretofore indicated, the Puget Sound line was opened for regular commercial traffic on August 1, 1909. Its first annual statistical report was filed with the Commission for the eleven months ending June 30, 1910. During that period the road moved a large revenue traffic and at the same time was engaged in completing the construction, more particularly, of its branch lines. In consequence of this condition of affairs expenditures for construction were made

while expenditures for operation were also going on. In accounting for these two classes of expenditures for entirely different purposes, large amounts were included in the cost of construction that should have been entered up as expenses of operation. This course resulted in an inflation of the property account and at the same time made an unwarrantably good showing of the returns from operation. The net income was also overstated by including in the cost of construction certain interest items accruing after August 1, 1909, when the road was opened for public service. Under our rules and regulations this interest should have been charged to income; and this departure from our regulations alone involved nearly \$500,000 of error in the report of the Puget Sound Company for that year. Moreover, revenues were overstated by including charges for the transportation of construction material at rates substantially higher than those exacted under its published tariffs by the Northern Pacific. This was done notwithstanding the recognized practice of carriers to use rates on such materials which represent only the actual cost of the service. The result of this course was to augment both the revenues and the cost of property accounts. While overstating those accounts the Puget Sound Company on the other hand included in its operating expenses no charges whatever for depreciation of its equipment. Had these different items been carried to its books in accordance with the rules and regulations of the Commission and in conformity with correct accounting practices the income for the Puget Sound Company for that year, reported at \$2,255,440.18, would have been practically eliminated. Its dividend of 2 per cent paid out of "income" for the first year of its operation could not have been paid; and without this income the St. Paul Company, which was practically the sole holder of the stock of the Puget Sound Company, would not have been able to pay its own dividends for the year 1911 out of its income. In order to have made the payment in full it would have been compelled to resort to its surplus from previous years.

The unlawful practices just described were continued after June 30, 1910, and the fictitious showing of income for that period was used by the officers of the Puget Sound Company to aid in the sale of its bonds. A letter written by the chairman of its board of directors and published in the Commercial and Financial Chronicle of March 18, 1911, contains this statement:

Although the Chicago, Milwaukee & Puget Sound Railway was opened for traffic only on August 1, 1909, it is already earning a large surplus over the interest on its first-mortgage bonds. For the six months ended December 31, 1910, the surplus income of that company after the payment of all charges, including interest on the \$123,000,000 first-mortgage bonds, amounted to \$1,685,952.

It should be stated that only \$27,175,000 of these bonds have been sold to the public, the remainder being held in the treasury of the St. Paul Company.

Another violation of proper accounting and of the Commission's accounting regulations by the Puget Sound Company has occurred in its report of property investment. As heretofore explained, the underlying principle of the classification of expenditures for road and equipment is that the entries in those accounts shall be stated in cash values. In its first report to the Commission the Puget Sound Company reported its investment in road and equipment at \$236,333,988, and this amount was carried into our official statistics of railways for the year 1910. Our subsequent investigations of the accounts of this carrier show, as it now admits, that the statement was about \$100,000,000 in excess of the cash investment of the company at that date. Its officials attempt to explain this by saying that the laws of the state of Washington forbade the company to issue bonds without first issuing capital stock to an equal amount. They assert that there never was any pretense that the stock so issued represented a cash investment and that it was never disposed of but was retained in the treasury of the company with no intention at any time of offering it to the public. We have not examined the laws of that state to ascertain how far they may explain the situation. But the course pursued was in violation of the Commission's rules and, to the extent of \$100,000,000, falsified the statistical report for that year officially issued by the Commission. In the grand total of the report that sum may make only a small percentage of error. This, however, does not excuse the Puget Sound Company for the misstatement of its investment. Even if the laws of the state of Washington compelled it to issue a large amount of stock representing no investment in order to legalize its issue of bonds, there was no necessity for including the par value of that stock in its property investment account. In fact the fundamental rule, to which we have alluded above, specifically excludes from the investment account items which do not represent investments in terms of cash. Except for the error thus unlawfully injected into our statistics this violation of our accounting regulations is now of no great importance because the St. Paul Company has recently absorbed the Puget Sound Company by merging the whole property under the one company.

Since the hearing we have been advised of another matter which may appropriately be mentioned here, namely, that the St. Paul Company, having first established a percentage of depreciation of equipment of one and one-half per cent a year, began on January 1, 1913, to set up a charge of only one per cent. This means, omitting the item of salvage, that its equipment has an estimated life approxi-

mating 100 years, a position that is wholly indefensible as we understand these matters and one which that company will not be able in any event to justify. The investment in equipment by the two companies, now merged into the St. Paul Company, approximates \$100,000,000. A reduction of one-half of one per cent in its charge for depreciation, therefore, means that its net income from operation is inflated by a half million dollars a year. If the charge ought properly to be three per cent the entry on its books of only one per cent would mean an inflation of its net income from operation by \$2,000,000 a year. The St. Paul, however, does not stand alone in this disregard of correct accounting principles. Moreover, the matter of depreciation is having attention in another connection, and the course of the St. Paul Company in that regard need not be further considered here.

The other violations of the Commission's accounting rules and regulations hereinbefore described are explained by the St. Paul Company as having resulted from negligence, inattention, and a lack of familiarity on the part of its comptroller and those under him with the requirements of the Commission. It is said that the comptroller, now deceased, was accustomed to the older methods of accounting and had not yet put himself fully in touch with the methods prescribed by the Commission and that for this reason the accounts of these carriers, in the details mentioned, were not in harmony with the Commission's regulations. There is no sufficient basis of record, however, to enable us to condemn or acquit the comptroller either of full responsibility or of his share of responsibility for the condition of the accounts of these companies here described; but there are grounds for thinking that his responsibility was very materially qualified and minimized by the instructions and directions given him by the executive and other officials. Whatever may be the fact in that regard the Commission now feels that the present accounting officers of the St. Paul Company are fully advised of the Commission's requirements, and a more careful observance of our rules and regulations is promised for the future. This we confidently anticipate will be realized. Nevertheless we feel it our duty to make this record of what has transpired in the past. We do not mean to be understood by anything here said as intimating that the St. Paul Company is not a valuable property and is not achieving the results reasonably anticipated from the extension of its line to the Pacific coast. The last report of the Puget Sound Company to this Commission as a separate property covered the period July to December, inclusive, of the year 1912. The earnings for that period, as compared with the earnings of the corresponding periods of previous years, show a very substantial growth. After making all due allow-

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ance for undetermined misstatements in the reports, the showing of results of the operation of the new line must be regarded as very favorable. What we wish to make clear is that the accounts of these companies have not correctly shown the facts, a condition of affairs not creditable to the St. Paul lines or to their officials.

It is desirable also to take this occasion to make some announcement with respect to our own future course in cases of accounting delinquencies of this nature. As has already been said, the principal classifications in our system of accounts for steam railroads were formally announced on June 3, 1907, and became effective on July 1 of that year. It was not a new system, embodying principles of railroad accounting originating with the Commission or which were unfamiliar to railroad men; on the contrary, the system was put in effect by the Commission only as the result of prolonged conferences with the accountants of the carriers. We availed ourselves of the best thought of these experts and of the best practices then in effect among the carriers of the country. While the system finally prescribed does not conform exactly to the accounting practices theretofore observed by any particular railroad, it represents the consensus of opinion among the accounting officers of the country as to what system would best and most accurately reflect the true facts and accord with sound business principles. We have regarded the interval since the promulgation of the earlier and more important classifications as a formative period and have patiently considered and disposed of the questions that have arisen under them. The underlying principles of the system have been maintained and have fully justified themselves. Their application to particular states of fact have from time to time been the occasion of doubt, correspondence, and final disposition; in this work of perfecting the system and making precedents for the application of its principles we have had, generally speaking, the cordial cooperation of the accounting officers of the carriers. The result of this experience is about to be expressed in a revision of the classifications. These, however, will embody no important modifications of the general principles underlying the Commission's rules.

It should also be said that during this formative period we have not invoked the penalties of the law against carriers and their officials for errors and failures to observe our rules and regulations. As these matters have come to light they have been corrected, after being called to the attention of the carriers involved. One or two vital principles in the accounts have been the subject of litigation in the courts. The water lines denied our jurisdiction over their port-to-port transactions. On that point the views of the Commission were sustained in *Interstate Commerce Commission v. Good-*

rich Transit Co., 224 U. S., 194. The rules governing the treatment of property abandonments were also contested, and the Commission was sustained in that respect in *Kansas City Southern Ry. Co. v. United States*, 231 U. S., 423. With respect to all other infractions of our rules and regulations that have come to our attention satisfactory conclusions have resulted from our conferences and correspondence with the delinquent carriers, or they are in process of adjustment. In the case now under consideration the accounts of the St. Paul Company are being recast to bring them into harmony with our rules and regulations so far as that is now possible.

It is, perhaps, unnecessary to emphasize the necessity and importance of statistical reports from carriers that will be uniform and truly reflect their condition so far as it may be represented in their accounts. Recent years have witnessed the exposure of glaring instances of the financial wrecking of transportation agencies by those in positions of authority. In many of these instances the application of correct accounting rules and principles, with proper knowledge on the part of the public and of all the stockholders of the conditions thus reflected, would have gone far to prevent such consequences. Moreover, the general public interest demands that the financial reports of carriers shall be true records of the facts that they purport to show. Public confidence both at home and abroad in the financial statements rendered by our carriers is very necessary to the further development of our transportation facilities; and to the degree that the accounts of any carrier are tainted with the suspicion of untrustworthiness, to that extent they will tend to impair this confidence among investors in the securities of our transportation companies and thus work to the detriment of all such enterprises.

But in order that an erroneous impression may not obtain as to the Commission's relation to such matters it should be understood that the law places upon the carriers the full responsibility for the correct statement of their accounts in accordance with the prescribed rules and regulations. The responsibility does not rest upon the Commission, and the burden of such a requirement would be sufficient to demonstrate the impracticability of any such plan. It is well to add that the present statements of the assets and liabilities of carriers are still largely affected by the records and accounts of the period prior to the legislation giving authority to the Commission over the accounts of carriers. Moreover, it is important to observe, with reference to the current accounts of the carriers, that our force of examiners is relatively so small as to make it impossible at regular intervals to inspect the accounts of the railroads and other instrumentalities of interstate commerce, and thus to give assurance that

the results of their operations, their income, their assets, and their liabilities will be correctly shown on their books. We are thus compelled to rely in large measure upon the cooperation of those in charge of the accounts of carriers in reaching these results.

The formative period to which we have referred must now be considered as having come to an end so far as all the important principles and requirements of our regulations are concerned, and we shall hereafter expect a more exact observance of the prescribed accounting systems by the carriers and their officials. Accounting officers understand the true functions of accounts and realize their importance in determining the correct economic condition of the transportation properties with which they are affiliated. Their instincts and training are such as naturally to lead them to keep their accounts as they should be kept. They would not have the confidence of their superior officers if this were not the case. But in many instances the accounting officers of carriers have not been left free to follow their natural inclinations in this regard. Irrespective, however, of the influences brought to bear upon an accounting officer to turn him from his true course as an accountant and from his duty, under the law, of keeping the accounts in accordance with the system prescribed by the Commission, it is nevertheless his hand, or the hand of some one immediately under his authority, that makes the wrongful record, and it is the accountant, therefore, to whom the Commission must look in the first instance for the proper carrying out of its rules and regulations. Under our regulations and prescribed form the oath of the accounting officer must be attached to the annual report of the carrier to the Commission, together with that of the executive; and, from the necessities of the case, it is the accounting officer who is immediately responsible and whom the Commission will first hold responsible when it becomes necessary to invoke the penalties of law; but we shall not hesitate to call to account with even greater severity anyone above the accounting officer in authority who may share in the responsibility for any violations of the accounting rules and regulations which have been prescribed for the use of the carriers that are subject to the act.

INVESTIGATION AND SUSPENSION DOCKET No. 248.

EMLENTON PETROLEUM RATES.

Submitted February 6, 1914. Decided February 9, 1914.

The extension of the respondent's higher Pittsburgh rate on petroleum and its products to Emlenton and other points north of Pittsburgh held to be a proper readjustment in view of the fact that shipments from these points to Wisconsin and Michigan destinations now pass through Pittsburgh at lower rates, in violation of the fourth section. Such violations can not be justified when the points so favored are beyond the competitive or other influences that control the rates from other points on the respondent's line.

C. D. Chamberlin for Emlenton Refining Company.

Frederic L. Ballard for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

This proceeding involves proposed increases in rates for the transportation of petroleum and its products in carloads from Emlenton, in the state of Pennsylvania, to Milwaukee, in the state of Wisconsin, and to Detroit, Ann Arbor, Grand Rapids, and other points in the state of Michigan. The rates under suspension are higher than the present rates by from one-half cent to two cents per 100 pounds.

The National Petroleum Association of oil refiners, comprising within its membership the Emlenton Refining Company, has protested against any increase in the rates from Emlenton as being unreasonable and also as being unjustly prejudicial in view of the fact that no corresponding increases are proposed in the rates from more distant competing refining points located in the so-called Buffalo group. It was pointed out by the protestant that shipments of petroleum originating in producing districts on the Pennsylvania Railroad, north of Emlenton, pass through that point and also through Pittsburgh, in order to reach the destinations in question; that the rates from all these points, except Pittsburgh, heretofore have been the same, and that any increase from Emlenton without corresponding increases from the districts north of it would be a departure from the provisions of the fourth section of the act.

Emlenton is on the Pennsylvania Railroad, 89 miles north of Pittsburgh and 44 miles south of Oil City. For some years it has been included, for rate-making purposes, within the Buffalo group, and has been accorded the same rates on petroleum as are exacted from other

points within that group. The change now proposed by the respondent carrier would remove Emlenton from that group and include it within the higher-rate territory surrounding Pittsburgh. It is the contention of the Pennsylvania Railroad that this readjustment is entirely proper for the reason that the rates from the north to and including Oil City and Franklin are made by competing short-line carriers, whereas no competition exists south of those points which would warrant the maintenance, to the destinations in question, of lower rates from Emlenton than are in effect from Pittsburgh.

The rates on oil in central freight association territory are usually made on the basis of 90 per cent of the fifth-class rate. The Buffalo basis of class rates to Michigan destinations now extends below Emlenton, while the class rates from Emlenton to Milwaukee are on the Pittsburgh basis. Oil rates to the designated destinations in the state of Michigan are made at present, therefore, upon the generally prevailing percentage of the class rates, although a departure from this system will be noted in the rates to Milwaukee. It was stated by the carrier at the hearing, however, that it was its purpose to readjust the class rates in this territory by increasing the rates south of Franklin to the Pittsburgh basis.

On behalf of the protestant it was contended that it markets its product in Michigan and Wisconsin to the extent of about one-half of its output, and that an increase of two cents in the rate, approximating one-eighth of a cent a gallon, would be sufficient to control the point of purchase. It was urged also that the margin of profit in the refining of oil is very slight, and that any increase in the rates over those in effect from other competing points of production would seriously injure its business.

The general rate structure involved in this proceeding has resulted in a violation of the fourth section which has continued for many years. The respondent, however, is protected in its departure from the provisions of that section, as amended in 1910, by its general application to continue in effect all rates published and in effect prior to the amendment. The present situation with regard to petroleum rates results from the fact that competing carriers at Buffalo, Oil City, and Franklin, operating under the advantage of shorter mileages, have made the rates from those points, and if the Pennsylvania Railroad is to participate in the traffic it must do so at the same rates. For that reason oil originating at refining points in the competitive territory north of and including Oil City and Franklin moves through Pittsburgh at rates made by the competing lines. The Pennsylvania Railroad has met these rates and has extended them to the noncompetitive territory south of Franklin to within a very short distance of Pittsburgh. The rates from Oil

City and Franklin are compelled by the strong competition of the direct lines and are not voluntarily maintained. In fact, it was stated for the respondent that if it were not for this competition no rates would ever have been established from this territory lower than the Pittsburgh basis, and that the rates would undoubtedly have been made slightly higher.

The justification for a departure from the fourth section is very frequently based upon the competition of short-line carriers, but where no such competition or other controlling factor is shown, no such defense can successfully be maintained; in other words, a fourth-section violation should not extend beyond the real necessities of the competitive or other controlling influences. In the case before us it is admitted that there is no competition south of Franklin. Points on the respondent's line north of its junction with the shorter competing lines, by which the rates to these destinations are made, take the Buffalo class rates to Milwaukee, and we think they may fairly take the Buffalo rates on petroleum and its products to the destinations in question; but the competition that Pittsburgh must contend with ought to be minimized, so far as possible, when the traffic from the more distant points passes through Pittsburgh. By the tariff under suspension the respondent proposes to narrow the rate conditions that are adverse to Pittsburgh by extending the Pittsburgh rates to the point where the competitive forces cease to be felt. To our mind this readjustment is entirely reasonable in view of the facts shown of record and in justice to the Pittsburgh refiner should be allowed. The order of suspension will therefore be vacated.

It should be understood that we do not at this time pass upon the reasonableness of the Pittsburgh basis of rates, as that matter is not definitely now before us. Nor may increases in class or commodity rates from Emlenton be predicated solely upon our findings in this case.

INVESTIGATION AND SUSPENSION DOCKET No. 352.
RATES ON TOMATOES FROM JACKSONVILLE, FLA., TO
KANSAS CITY, MO., AND OTHER POINTS.

Submitted January 14, 1914. Decided March 2, 1914.

Proposed increase in the proportional rates from Jacksonville, Fla., to destinations west of the Mississippi River, applicable on tomatoes originating at points on the Florida East Coast Railway, not justified.

M. Carter Hall for Florida East Coast Railway Company.

G. R. Williams for Chase & Company.

J. F. Thomas for H. C. Schrader Company

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The proposed increase under investigation is in the proportional rates from Jacksonville, Fla., to destinations west of the Mississippi River, applicable on tomatoes originating at points on the Florida East Coast Railway. The tariff carrying the same, supplement No. 2 to fruit and vegetable tariff No. 6, I. C. C. No. 223, of the Florida East Coast Railway Company, has been suspended until April 14, 1914. No change in the proportional rates to Jacksonville is proposed.

Proportional rates on tomatoes from Jacksonville to points west of the Mississippi River are based on the lowest combination. Kansas City, Mo., is cited as an illustrative point of destination, the present proportional rate from Jacksonville being 39 cents per standard crate of 50 pounds, minimum 24,000 pounds (480 crates), based on 30 cents to Cairo, Ill., and 9 cents beyond; and that proposed 41½ cents, minimum 20,000 pounds (400 crates). The increase is in the proportion of the lines west of the river and follows the change in the rating of tomatoes under western classification from class C, minimum 24,000 pounds, to fifth class, minimum 20,000 pounds. The minimum applicable to Jacksonville is 21,000 pounds (420 crates).

The only respondent represented at the hearing was the Florida East Coast Railway Company, and it appears from the testimony that the present rates are more satisfactory to it and to its shippers than those proposed, for the reason that under the higher minimum

heavier loading is secured, resulting in a saving of equipment which in times of car shortage incident to the heavy movement of produce in the spring is important to both carrier and shipper. The change in the rating of tomatoes referred to, which was allowed provisionally in *In the Matter of Suspension of Western Classification No. 51*, 25 I. C. C., 442, and the resulting uniformity in minimum on shipments of tomatoes from Jacksonville, the lower minimum generally being applicable to points on or east of the Mississippi River, are the arguments advanced for allowing the increase. There is no showing that the present rates are unremunerative.

It was stated that in the rerating of tomatoes the western carriers had under consideration their movement in a practically ripe condition, under refrigeration, and that those shipped from Florida are green, move under ventilation, and can be safely loaded to 24,000 pounds. It was stated that the decrease in minimum would not offset the increase in rate.

Upon consideration of all the facts of record we are of opinion that the respondents have not justified the proposed increase. An order will be entered requiring the cancellation of the tariff under suspension and the maintenance of the rates now in effect for the statutory period.

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No. 5892.
STANDARD OIL COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 2103.

Submitted September 22, 1913. Decided February 9, 1914.

1. Rate charged by defendants for the transportation of a carload of iron pipe fittings from Martinsville, Ill., to Whiting, Ind., not found to have been unreasonable. Complaint dismissed.
2. Defendants' fourth section application asking authority to continue rates for the transportation of iron pipe fittings in carloads from East St. Louis, Ill., to Whiting, Ind., which are lower than rates concurrently in effect on like traffic from Martinsville, Ill., and other intermediate points, denied.

Edgar Bogardus for complainant.

C. B. Sudborough for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in business at Chicago, Ill. By complaint filed June 26, 1913, it alleges that the charges collected by defendants for the transportation of a carload of iron pipe fittings from Martinsville, Ill., to Whiting, Ind., were unreasonable and in violation of the long-and-short-haul clause of section 4 of the act. Reparation is asked.

The shipment described in the complaint moved in March, 1913, under specific routing instructions by the shipper, via the Vandalia Railroad from Martinsville to Plymouth, Ind., and thence via the Pennsylvania Company to destination. Freight charges were collected in the sum of \$63.66 at the fifth-class rate of 14.5 cents per 100 pounds, on a weight of 43,900 pounds. There was in effect at the time, via other routes from Martinsville to Whiting, a rate of 9 cents on iron pipe fittings in carloads. Defendants likewise published a rate of 9 cents on like traffic from East St. Louis to Whiting, as to which points Martinsville is directly intermediate.

Complainant offered no evidence to show that the rate charged was unreasonable in and of itself. The situation presents purely a fourth section question arising from the fact that defendants charge a lower rate from East St. Louis to Whiting than from Martinsville to Whiting.

That portion of Fourth Section Application No. 2103, filed by W. H. Hosmer, agent, on behalf of defendants and other carriers, which asks authority to continue rates on iron pipe fittings from East St. Louis to Whiting that are lower than rates concurrently in effect on like traffic to the same destination from Martinsville and points intermediate thereto, was heard in connection with the complaint in this case. No formal answer to the complaint was filed; but at the hearing defendants undertook to justify their departure from the rule of the fourth section in the respects complained of, on the ground that such departure is necessary to enable them to meet, by their circuitous route, the rate maintained by the shorter and more direct lines from East St. Louis to Whiting. They contend that they should be allowed to meet the lower rate from East St. Louis via the shorter lines without reducing their rates from intermediate points.

Whiting is within the switching district of Chicago. The distance from East St. Louis to Whiting via the Chicago & Alton Railroad, the short line, is 297 miles. The distance between the same points via defendants' lines, through Martinsville and Plymouth, is 392 miles. The long-line distance is about 132 per cent of the short-line distance. Martinsville is on the Vandalia road, 137 miles from East St. Louis and 255 miles from Whiting. The rate via the Chicago & Alton for a haul of 297 miles is 9 cents, and defendants meet that rate for the haul of 392 miles via their lines, but at the same time charge a rate of 14.5 cents for the haul of 255 miles from Martinsville, which is 137 miles from East St. Louis. Martinsville is 42 miles nearer Whiting via defendants' lines than is East St. Louis via the Chicago & Alton, and yet the rate to Whiting is 5.5 cents higher from Martinsville than from East St. Louis.

The Commission has repeatedly held that carriers whose lines are extremely circuitous should be permitted to meet rates of their short-line competitors, although charging higher rates at intermediate points upon their own lines. *Fourth Section Applications 1870, 2045, 2471, and 4218*, 24 I. C. C., 192; *Bowling Green Business Men's Protective Asso. v. L. & N. R. R. Co.*, 24 I. C. C., 228; *Edwards & Bradford Lumber Co., v. C. B. & Q. R. R. Co.*, 25 I. C. C., 93. Application of this principle, however, is subject to the qualification that the rates from or to the intermediate points shall bear a just and reasonable relation to the rate from or to the long-distance point. *Alton Board of Trade v. C. & A. R. R. Co.*, 28 I. C. C., 589, 593.

The evidence submitted in this case does not justify the maintenance by defendants of a rate of 14.5 cents from Martinsville to Whiting while at the same time maintaining a rate of 9 cents on the same traffic from East St. Louis to Whiting.

Upon the facts of record we are of opinion and find that defendants have failed to show that they are entitled to continue a lower rate for the transportation of iron pipe fittings in carloads from East St. Louis to Whiting, than the rates concurrently applied by them on like traffic to Whiting from Martinsville and points intermediate thereto. It follows that the fourth section application filed by defendants, in so far as it relates to the traffic and rate situation here involved, must be denied. An order dismissing the complaint, and a fourth section order in accordance with the findings herein, will be entered.

No. 5403.

DAVID E. MILLER

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted May 5, 1913. Decided February 9, 1914.

Defendants' tariff provides that they will not redeem any form of passenger transportation which has been mislaid, lost, destroyed, or stolen, and that requests for redemption of unused passenger tickets will be honored only when such requests are accompanied by the unused transportation; *Held*, That these conditions are not unreasonable.

Herman Moskowitz for complainant.

R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This complaint is brought by Martin Klinger in behalf of David E. Miller, a minor, hereinafter called the passenger. By complaint, filed January 2, 1913, complainant seeks an order requiring defendants to refund the value of the unused portion of a ticket issued for passage from Albany, Ga., to Philadelphia, Pa., which was lost by the passenger while en route.

On August 19, 1912, the passenger purchased from the Atlantic Coast Line Railroad Company, hereinafter called the rail carrier, a through first-class limited ticket from Albany, Ga., to Philadelphia, Pa., via the rail carrier to Savannah, Ga., and the line of the Merchants & Miners Transportation Company, hereinafter called the

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ocean carrier, to destination. The amount paid for the ticket was \$22.80, based upon \$5.25, Albany to Savannah; 50 cents, transfer charge at Savannah; and \$17.05, Savannah to Philadelphia. While en route to Savannah the portion of the ticket entitling the passenger to transportation beyond that point was lost by him and never recovered. On August 20, 1912, the passenger purchased another ticket for transportation from Savannah to Philadelphia for \$17.05, and obtained the same steamer reservation that had been made under the original ticket. About one hour after arrival at Savannah the passenger notified the ocean carrier that he had lost his ticket, and on September 5, 1912, the rail carrier was also notified of such loss. There is nothing of record to indicate that the portion of the ticket not used by the passenger has ever been honored for transportation.

Complainant contends that, in as much as no evidence was presented by defendants to show that the lost portion of the ticket had been used or redeemed, refund should be made to him in the sum of \$17.05.

The witness for the rail carrier testified that claims for redemption of unused portions of passenger tickets are filed in the accounting offices of that company under the names of the claimants, and that it keeps no other reference to such claims; that it is impracticable to keep a record of the ticket numbers of the unused transportation received for redemption; that it would involve much additional cost if it were required to make refund in connection with lost tickets and in connection with such claims to search its files to ascertain whether a ticket bearing a particular number had previously been redeemed; that the average number of claims filed with the rail carrier for redemption of passenger tickets is over 5,000 per year; and that it is possible that the unused portion of the ticket in question has been redeemed by some person other than the original passenger, although under its present accounting system the rail carrier is unable to determine whether this is a fact.

The material parts of the issuing carrier's tariff governing the redemption of passenger tickets are as follows:

This company will not redeem any form of passenger transportation which has been mislaid, lost, destroyed, or stolen.

Requests for redemption of unused passage tickets will be honored only when such requests are accompanied by the unused transportation.

Defendants contend that they should not be compelled to protect passengers against the result of their own negligence; that, admitting the facts to be as alleged by the passenger, the regulations of the carriers must take into account all sorts of persons and conditions; and that, if compelled to make refund on tickets alleged to have been lost, they would be obliged to adopt burdensome practices and records in order to protect themselves as far as possible against fraudulent demands.

Conference Ruling No. 238 is as follows:

If a limited passenger ticket is lost or destroyed before being used (and no error or neglect of a carrier's agent is involved), it is not unlawful for the carrier, after the limit of the ticket has expired, to refund to the passenger the extra fare paid as a result of such loss or destruction, provided the loss or destruction, the identity of the claimant as the original holder, and the fact that the extra fare was paid for travel by the original holder over the route and within the limit of the lost ticket, are clearly and definitely proved in a form that becomes a part of the record in the case; and provided it is clearly shown that such ticket has not been used or redeemed by any other person. Such action should be withheld for a sufficient period of time properly and reasonably to guard against the lost ticket being redeemed or used by some person other than the original holder.

The conference ruling, however, goes only to the extent of stating that under the circumstances described such refund would not be unlawful. We are now confronted with the question whether we should require such refund to be made. The case is important, because there is nothing in the record which would differentiate this claim from thousands of others against practically all rail carriers in the country; and any ruling in this case must necessarily establish a precedent to be followed in similar cases.

In *Namm v. P. R. R. Co.*, Unreported Opinion No. A-394, witnesses for the Pennsylvania Railroad Company set forth at length the reasons why their company refuses to make refunds on lost passenger tickets. Those facts were not stated in the Commission's opinion, because the case was decided upon another point. We think, however, that in reaching a decision which can not be limited in application to this single claim, but must necessarily affect all rail carriers, we may refer to the evidence of record in other cases. In the *Namm case* the Pennsylvania Railroad Company showed, by exhibits stating the result of actual experiments, the additional expense to which it would be subjected in order to check its tickets for the purpose of determining, in case of claim for refund on a lost ticket, whether such ticket had been used or redeemed by the claimant or some other person. It appeared that it would be necessary for that company to check more than 52,000,000 tickets per year; and, assuming for the clerical force engaged in such work an average wage of \$40 per month, and based upon the time within which the average clerk could examine 1,000 tickets, the expense of checking 52,000,000 tickets per annum would exceed \$68,000.

It further appeared that even if this expensive accounting system were adopted it would not necessarily protect the company against fraudulent claims for refunds. For example, if a passenger traveled on the ordinary single coupon ticket between local points on the Pennsylvania Railroad, as from Pittsburgh, Pa., to Washington, D. C., the ticket would be retained by the passenger until he reached

the point at which the last conductor on the route took charge of the train. Consequently, on the trip stated, a passenger could use a ticket from Pittsburgh to Washington for transportation as far as Baltimore, Md., there leave the train and destroy the ticket, after which he could make claim and obtain refund from the railroad for the entire value of the ticket.

Several cases involving lost tickets have already been before the Commission. In *Hill v. P. R. R. Co.*, 25 I. C. C., 650, and *Edelsten v. P. R. R. Co.*, 26 I. C. C., 359, the Commission approved certain regulations which prohibited refund for the unused portion of "punch cancellation" commutation tickets and mileage tickets, respectively, both of which were purchased at a substantial reduction from the regular fares. In the former case the commutation ticket was valid for transportation for one year from date of purchase, and no report or audit was made by defendant except for the first and last trips under the ticket. In the latter case the mileage ticket was valid for transportation of bearer for one year from date of purchase over all lines of the Pennsylvania Railroad system east of Buffalo and Pittsburgh, and the coupons were not audited in such manner as to show how many coupons of a particular book had been used. In *Moore v. N. Y. & L. B. R. R. Co.*, 20 I. C. C., 557, the carrier's rule relating to refund on commutation tickets lost by the holder thereof provided, among other conditions, that refund would be made only when the lost ticket had been found and returned to the proper officer of the issuing company. Upon the record in that case the Commission held that the rule in question was unjustly discriminatory.

Upon the facts of record in this case, and reexamination of the records in the cases above cited, we have reached the conclusion that it would be unjust and unfair to the carriers, and involve them in additional expense out of all proportion to the results to be obtained, if we were to require them to make refunds of the value of lost passenger tickets. It follows that the complaint in this case must be dismissed and it will be so ordered.

No. 4424.
MISSISSIPPI RIVER CASE.
STATE OF IOWA ET AL.
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Decided January 13, 1914.

Under the findings of the original report herein, 28 I. C. C., 47, class rates between trunk line and central freight association territories and the upper Mississippi River crossings are fixed for the future and the basis for the present adjustment of commodity rates is indicated.

Same appearances as in the original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In our prior report herein, 28 I. C. C., 47, the carriers in trunk line and central freight association territories were directed to make a general revision in their rates to and from the upper Mississippi River crossings from Keokuk to Dubuque in the state of Iowa. The rates proposed by the carriers to meet the suggestions there made have been submitted and have been the subject of conferences between the representatives of the shippers and the carriers. As to some of the rates an agreement has been reached between the parties in interest, but the duty devolves upon the Commission to give further indication of what will be necessary to meet the views expressed in the original reports.

The rates to the upper crossings, westbound, submitted by the carriers operating in trunk line territory seem closely to follow the views expressed by the Commission and met with no substantial criticism from the representatives of the Iowa interests. Some rates from communities in the immediate vicinity of Pittsburgh, which have for a long time been made on arbitraries over Pittsburgh, still bear relation to the Pittsburgh rates in the proposed schedule of the carriers and will be discussed in connection with the central freight association line rates.

With regard to the eastbound rates we expressed the view that they should be on a parity with those westbound. The rates proposed by the trunk lines wholly disregarded that part of the report.

As an illustration it may be said that the proposed rates from Syracuse to the upper crossings are—

Class	1	2	3	4	5	6
Rate.....	63	55	42	30	25	21

while the proposed eastbound rates are—

Class.....	1	2	3	4	5	6
Rate.....	75½	66	50½	35½	30½	25½

In explanation of this disparity the carriers assert that the lower westbound rates were based on the fact that the manufacturing industries were located east of Buffalo and Pittsburgh when the rates were originally established, while the eastbound traffic at that time consisted principally of live stock, grain, and grain products. This seems to offer no justification for higher rates eastbound beyond that presented in the original record; but it is now pointed out that to require a parity between the eastbound and westbound rates from and to the upper crossings only, those being the only points to which the record is directed, while leaving the entire adjustment to and from central freight association territory on the present basis, would be unusual. The effect of an equality in the adjustment to and from the river towns might extend as far east as the Indiana-Illinois state line, but beyond that point the disparity eastbound and westbound would continue. The present eastbound and westbound rates between New York and the upper crossings are on a practical parity, but the eastbound rates to all other points east of the Buffalo-Pittsburgh line are substantially higher than are those applying on traffic from the same points westbound. So far as the rates applying to and from Baltimore and Philadelphia are concerned, the Commission in other cases has given approval to the disparity that has existed for many years, and the carriers ask that they be permitted to continue the present adjustment. Ultimately a parity between the eastbound and westbound rates probably must be made, but the matter had no special consideration here, and, under the circumstances, we are not disposed at this time to insist upon a parity of rates eastbound and westbound, nor, as we understand the matter, is such a readjustment insisted upon at this time by the Iowa interests.

With regard to the rates proposed by the central freight association lines, in general it may be said that they show a reduction only by the elimination of the bridge arbitraries of—

Class.....	1	2	3	4	5	6
Arbitraries....	5	5	5	4	3	2

From a few points in central freight association territory the carriers have reduced the rates 1 cent further on the first two classes, with a

smaller reduction on the lower classes. The situation as proposed by the carriers may be illustrated by the following table showing the class rates, in cents per 100 pounds, from typical points in the originating territory to west-bank cities:

	1	2	3	4	5	6
Akron, Ohio:						
Present.....	65	56½	43½	30½	25½	20½
Proposed.....	59	50½	38	26½	22	18
Reduction.....	6	6	5½	4	3½	2½
Cincinnati, Ohio:						
Present.....	55	50	40	29	24	19½
Proposed.....	50	45	35	25	21	17½
Reduction.....	5	5	5	4	3	2
Columbus, Ohio:						
Present.....	59	51½	41	29½	24½	20
Proposed.....	54	46½	36	25½	21½	18
Reduction.....	5	5	5	4	3	2
Detroit, Mich.:						
Present.....	55	50	40	29	24	19½
Proposed.....	50	45	35	25	21	17½
Reduction.....	5	5	5	4	3	2
Logansport, Ind.:						
Present.....	52	47	37	26	21	17
Proposed.....	47	42	32	22	18	15
Reduction.....	5	5	5	4	3	2

In the original report we pointed out the revision which we found would establish the proper relation between the upper crossings and St. Louis, but indicated that we would not require at this time a readjustment that might be so far-reaching in its effects on the revenues of the carriers. The rates as proposed by the central freight association lines do not meet the suggestions we made for a proper present adjustment. The rates from central freight association territory to Chicago and points west thereof have been in force, with minor changes, since April 13, 1896. To the upper crossings from Pittsburgh the rates were constructed on the basis of 70 per cent of the New York rate, and points west of Pittsburgh were on an established differential under Pittsburgh. On the other hand, from Pittsburgh to St. Louis the rates are 64½ per cent of the New York rate to St. Louis, and from points west to St. Louis practically the central freight association scale is applied. From points east of the Buffalo-Pittsburgh line the rates have heretofore been made on the same percentage basis to St. Louis and to the upper crossings, but, as indicated, from Pittsburgh and Buffalo a difference in the percentage basis is applied. The basis of making rates between central freight association points

on the one hand and the upper and lower crossings on the other has not been a logical one.

The carriers fear a reduction of the rates to the upper crossings below their proposed schedules because they think in that event the central freight association scale will conflict with the higher Illinois scale. It is said, for example, that the first-class rate from Cincinnati to St. Louis is 41 cents for a distance of 341 miles. This is practically in accordance with the central freight association scale, whereas the first-class rate from Chicago to Keokuk is 41.7 cents for a distance of 249 miles in accordance with the Illinois scale. It is also stated that there are points, such as La Porte, Muncie, and Fort Wayne, in the state of Indiana, where the rates practically apply through Chicago and the rate proposed is practically the Chicago rate. Giving due consideration to all that has been said on the original record and in the conferences held since our reports were promulgated, it is our opinion that the rates between points in central freight association territory, beginning with Buffalo and Pittsburgh, located at the extreme eastern boundary, and the upper Mississippi River crossings should be adjusted as follows: From and to Buffalo and Pittsburgh and points taking the same rates, the rates should be 66 per cent of the New York rate to the upper crossings. Allowing the usual disposition of fractions, the resulting scale will be as follows:

Class....	1	2	3	4	5	6
Rate....	59½	51½	39½	27½	24	20

These are the following arbitraries over the rates to and from St. Louis:

Class.....	1	2	3	4	5	6
Arbitraries....	3	2½	2	1½	1½	

The rates between points west of Buffalo and Pittsburgh and the upper crossings for distances of more than 500 miles should be on the same scale of arbitraries over the rates to and from St. Louis as we find proper to apply from Buffalo and Pittsburgh; for distances of 500 miles and under, where the average distance between the central freight association point and Keokuk, Burlington, Clinton, and Dubuque are the same or less than the distance to St. Louis, the same scale of differentials over the St. Louis rates will apply. But where the average distance to the upper crossings exceeds the distance to St. Louis the scale of differentials mentioned will be exceeded by one cent on the first two classes and by one-half cent on the remaining four classes for each 25 miles or fraction thereof that the distance to the upper crossings exceeds the distance to St. Louis. The resulting first-class rates will be as follows:

From—	Distance.		First-class rate.	
	To St. Louis.	To average of upper crossings.	To St. Louis.	To upper crossings.
	Miles.	Miles.	Cents.	Cents.
Buffalo, N. Y.....	731	720	55.5	55.5
Cincinnati, Ohio.....	341	442	41	49
Cleveland, Ohio.....	548	532	52.5	55.5
Columbus, Ohio.....	428	477	46	51
Dayton, Ohio.....	350	421	43	49
Detroit, Mich.....	488	467	46	49
Fort Wayne, Ind.....	342	338	43	46
Grand Rapids, Mich.....	462	368	46	49
Indianapolis, Ind.....	240	324	38	46
La Fayette, Ind.....	223	267	38	43
Lansing, Mich.....	478	409	46	49
Pittsburgh, Pa.....	621	647	55.5	55.5
Saginaw, Mich.....	593	499	46	49
South Bend, Ind.....	370	389	43	46
Terre Haute, Ind.....	168	397	32.5	43
Toledo, Ohio.....	437	438	46	49

A few exceptions to this rule are necessary in order to keep open the established gateways and practicable routes and to preserve the relationship which has heretofore existed. The first-class rate from Muncie to the upper crossings will be made on the basis of 46 cents, the same as from Fort Wayne and Indianapolis, and the rates applying on the other classes will be the same as those applying at Fort Wayne and Indianapolis. Portsmouth and Marietta and a few other basing points will require similar adjustments in order to preserve established relationships. Certain points in the so-called gas belt in the state of Indiana will require similar treatment. Terre Haute and adjacent points within the narrow territory lying east of the Indiana-Illinois state line will take rates slightly higher than would result from the exact application of the general basis of rates above mentioned.

The few points immediately east of Pittsburgh, heretofore mentioned, include Connellsville, Crabtree, Loyahanna, and Johnstown, in the state of Pennsylvania, and are located in trunk line territory. They have long enjoyed rates to western points based on arbitraries over Pittsburgh and not made with reference to rates from the eastern cities. We are convinced that the same basis should be adhered to in constructing rates for the future. These rates must be revised to meet the readjustment we here require in the Pittsburgh rates.

The central freight association territory eastbound rates, both from St. Louis and the upper crossings, have not heretofore been on a parity with those applying westbound. In some instances the eastbound rates are lower and in other instances higher than the westbound. This is true also regarding the St. Louis rates. As a present adjustment we find that the eastbound rates to central freight association points from the upper crossings should not exceed the eastbound rates from St. Louis by an amount greater than the

westbound rates from the same points to the upper crossings exceed those to St. Louis.

The commodity rates between trunk line territory and the upper crossings that have been proposed by the carriers are on substantially the same basis as the class rates, and these are approved in so far as they do not advance commodity rates now in force. In some instances it is proposed, both in trunk line and central freight association territories, to cancel commodity rates and leave in force the class rates which we here fix. This should not be done when the result is an advance over the commodity rate now in effect. Should the carriers in these territories desire to make any such general readjustment of their commodity rates it should be done in such form as will permit the Commission properly to investigate and pass upon the reasonableness of that course. The commodity rates between central freight association points and the upper crossings are subject to the same criticism that has been made regarding the class rates in that territory; but upon the present record we find that those now in effect should be continued for the future except where the application of the class rates herein fixed will make a lower charge. When this occurs, the present commodity rate should be canceled and the class rate applied. Some eastbound commodity rates, both to central freight association and to trunk line territories, have been established by the Commission after full investigation. In some of these instances the same rates apply from the upper crossings as from St. Louis. These should be continued. As we said in the original report, the commodity rates are special rates made to meet special conditions and should not necessarily be disturbed because of the change in the class schedules. With the reservations noted, we find that the commodity rates between central freight association points and the upper crossings should not exceed the rates between the same points and St. Louis by more than the differential applied between the same points on the class in which the commodity would fall under the official classification.

Permission to establish the class rates hereinabove required, as well as the commodity rates from trunk line territory, and to make them effective on April 1 next on five days' previous notice is hereby granted; the commodity rates from central freight association territory will be established on statutory notice and made effective on April 15.

29 I. C. C.

INTERIOR IOWA CITIES CASE.

No. 3464.

STATE OF IOWA ET AL.

v.

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.**

No. 3465.

SAME

v.

**NEW YORK CENTRAL & HUDSON RIVER RAILROAD COM-
PANY ET AL.**

Decided January 13, 1914.

The schedule of proportional class rates submitted by the defendant carriers, under the findings of our original report herein, 28 I. C. C., 64, for application west of the Mississippi River on traffic moving between interior Iowa cities and points east of the Indiana-Illinois state line, approved.

Clifford Thorne and J. H. Henderson for Iowa State Board of Railroad Commissioners.

A. W. Dowler for Shippers' Association of Fort Dodge, Iowa.

W. B. Martin for Shippers' Association of Dubuque, Iowa.

E. G. Wylie for Greater Des Moines Committee.

H. F. Sundberg for Cedar Rapids Commercial Club.

H. C. Barlow for Chicago Association of Commerce.

A. P. Humburg for Illinois Central Railroad Company.

Conrad E. Spenz for Chicago, Burlington & Quincy Railroad.

W. F. Dickinson for Chicago, Rock Island & Pacific Railroad Company.

C. C. Wright for Chicago & North Western Railway Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The schedule of proposed proportional rates west of the upper Mississippi River crossings submitted by the carriers to meet our suggestions in the original report herein, 28 I. C. C., 64, shows material reductions in the first and second class rates, with lesser reductions in the lower classes. The schedule is made up by using the Iowa distance scale from the nearest river crossing and adding thereto 2 cents on the first and second classes and 1 cent on the remaining classes. The rate thus resulting is applied from the east-bank points on traffic originating

east of the Illinois-Indiana state line. In the *Mississippi River case*, 28 I. C. C., 47, the class rates from New York and other eastern cities to west-bank points are fixed at—

Class....1	2	3	4	5	6
Cents....2	2	1	1	1	1

higher than the rates on the same classes to St. Louis; and the rates to St. Louis are applied by the carriers as proportional rates to east-bank points on traffic destined to interior points in Iowa. It follows that as to traffic from eastern cities the through rate arrived at by the use of the two proportionals is the same as the combination of locals through the nearest river crossing. The carriers have proposed, however, to apply these proportional rates from all the upper Mississippi River gateways, and when applied over the greater mileage from the more distant river points or the average of all the river points it will be found to be substantially below the Iowa mileage scale, and therefore less than the combination of locals. From points in central freight association territory, on account of the greater spread between the local and proportional rates to the river, the sum of the two proportionals is in all cases less than the combination of locals.

The complainants introduced various exhibits at the conference for the purpose of demonstrating that the per-ton-mile revenue yielded by the proposed proportionals is too high compared to the revenue up to the river on traffic from eastern cities. It was shown that the per-ton-mile revenue from New York to Chicago, a distance of 912 miles, on first class is 16.4 mills; to Clinton (local), 1,050 miles, 17.1 mills; and to East Clinton (proportional), 16.7 mills; while the per-ton-mile earnings on the through rate from New York to De Witt, in the state of Iowa, is 19.9 mills; to Wheatland it is 19.7 mills, and grades up to 21.4 mills at Woodbine, the eastern boundary of the Missouri River 55-cent rate zone, and then grades down again to 20.5 mills per ton-mile at Council Bluffs. While it is a general principle of rate construction that a longer haul should ordinarily yield a lower rate per ton-mile, there is here a situation in which are involved different transportation conditions east and west of Chicago and the Mississippi River. The thinner traffic west of the basing points, as well as the two-line hauls involved and other considerations, make it proper to depart from the general rule to the extent here shown. This feature of the case is fully covered by our report in *Warnock Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 546,

The schedule of proportional rates submitted by the carriers for our approval contains numerous deviations from the long-and-short-haul provision of the amended fourth section of the act. For example, it is proposed to establish a first-class proportional rate of 34.8 cents to Des Moines, while to Slater, an intermediate point on the Chicago & North Western Railway, 41.2 cents. The rate to Des Moines is established

the basis of the short-line mileage of 155 miles from Muscatine by way of the Rock Island, whereas the short-line distance to Slater over the rails of the Chicago, Milwaukee & St. Paul Railway from Davenport is 193.6 miles, and the distance over the North Western from Clinton is 198.7 miles. The rate proposed to Slater is two cents over the Iowa distance scale for 194 miles, and is, therefore, made in accordance with the general basis for these proportional rates throughout the state. We believe this a proper basis to apply, under all the circumstances shown of record, in order that the traffic may continue to move through all the gateways. A fourth section order will therefore be issued authorizing the carriers to continue to meet the rate over the direct route from the nearest gateway to point in Iowa, and to maintain higher rates to intermediate points, provided the rates to said intermediate points do not exceed the Iowa distance scale over the direct route from the nearest river crossing to said intermediate points by more than the following amounts:

Class....	1	2	3	4	5	A	B	C	D	E
Cents....	2	2	1	1	1	1	1	1	1	1

The carriers have followed this course in the schedules which they have submitted, and such schedules of proportional class rates are approved with the understanding that they are to be made applicable both westbound and eastbound.

In the original report herein, *supra*, we said at page 75:

In the schedules of rates which the carriers will submit to us on October 1 next, as required herein, it will be well for them to embrace the commodity rates or at least to give some clear indication of some basis upon which their commodity rates will be brought in line with the principles upon which we here require the class rate to be readjusted.

The carriers have not followed this suggestion and have filed no schedule of commodity rates or basis for their construction. It is our understanding, however, that the Iowa interests consider that the present proportional rates west of the river on commodities originating east of the Indiana-Illinois state line should remain in effect except where the class proportionals herein established make lower, in which event the class rates should govern. This we approve, and if we are not correct in our understanding the matter may be again called to our attention.

The schedule of proportional class rates, proposed by the carriers and fully considered at the conference between the shipping interests, the carriers and the Commission, is filed of record and need not be reproduced here. A relief order under the fourth section will be entered in accordance with the findings herein; and permission is hereby granted to establish the rates hereinabove required and to make them effective on April 1 next on five days' previous notice to the public and to the Commission.

No. 3068.

CEDAR RAPIDS COMMERCIAL CLUB

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

No. 4447.

FORT DODGE SHIPPERS ASSOCIATION

v.

CHICAGO GREAT WESTERN RAILROAD COMPANY.

No. 3464.

STATE OF IOWA ET AL.

v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY ET AL.

Decided January 13, 1914.

Upon the findings of the original report herein, 28 I. C. C., 76, class rates are fixed for the future between Chicago and points in Iowa and the general basis of commodity rates between the same points is indicated.

Same appearances as in the original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In our first report in this case, 28 I. C. C., 76, 80, commenting on the present scale of rates between Chicago and points in the state of Iowa, we said:

We find that the rates in question are excessive and unreasonable and are in need of a revision. * * * But we think that the rates from Chicago to the Missouri River made on an 80-cent scale should be graded back across the state down to the 37½ to 41.7 cent rates at the Mississippi River. * * * In revising the rates due attention must be given to the lower classes; a revision only of the first-class rates will not meet the situation.

At the subsequent conferences before the Commission between the carriers and representatives of the shippers the carriers called attention to the language of the report, on p. 80, viz:

We do not condemn the basis of those rates as a whole, nor do we understand or anticipate that our action here will result in extensive reductions in the level of the rates or in the earnings of the carriers,

and they insisted that they are warranted in the assumption that the Commission desired primarily a readjustment of these rates to

get them in some sort of harmonious relationship to each other and ultimately on a basis which would not cause serious reduction in the revenue.

An examination of the schedule of rates proposed by the carriers under our report herein shows that they suggest a reduction in the first-class rates at many points and have in a measure graded the 80-cent rate at the Missouri River down to the 37½-cent rate at the Mississippi River, as directed in our report. But after fixing the first-class rates they propose rates on the lower classes, with the relationships to first class based on the scale of percentages applied in Minnesota by the railroad and warehouse commission of that state. The use of those percentages, in connection with the first-class rates so proposed by the carriers, results in a schedule of class rates, which, taken as a whole, works a material advance over the present rates; and the increase is emphasized in the third and fourth classes and class A, under which undoubtedly a larger volume of traffic moves than under the higher classes. The carriers thus propose a revision which, while showing a general reduction in the first-class rates, would effect a substantial increase in the rates under which the bulk of the tonnage moves to interior Iowa. This of course is not in accord with our finding that the rates in question are excessive and unreasonable.

At a subsequent conference upon the proposed rates, at which the shippers and carriers were represented, several methods of arriving at an equitable adjustment of the rates were suggested, each being more or less meritorious, but none of which seems to us to meet the requirements of the record.

The present scale of rates between Chicago and the Missouri River, which has been in force for many years, is:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	80	65	45	32	27	32	27	22	18½	16

This scale extends for approximately 75 miles east of the Missouri River and from there eastward is gradually lowered until it reaches the Mississippi River. The scale of rates now proposed by the carriers brings the boundary of the first-class rate of 80 cents a little nearer to the Missouri River, but extends the boundary of the fourth-class rate of 32 cents more than 150 miles east thereof, or nearly half way across the state. In *Corn Belt Meat Producers Assn. v. C., B. & Q. Ry. Co.*, 14 I. C. C., 376, 396, cited at the conference, we said, commenting upon the rates on cattle from Iowa to Chicago:

The 23½-cent rate which applies at Omaha is carried for 150 miles east before the process of grading down to the Mississippi River begins. This is too far. There is a

strip along the Missouri River from 50 to 75 miles in width to which this 23½-cent rate may properly be applied as a blanket rate, but after that point is passed we think the rate should be gradually reduced toward the east.

We were there considering rates that began at the Missouri River at 23½ cents and were graded to 15 cents at the Mississippi River, thus affording a spread of only 8½ cents to be distributed across the state. In this proceeding we are to grade down the 80-cent scale of class rates to the 37½-cent scale at the Mississippi River. We recognize the advisability of applying the Missouri River rates to a narrow strip toward the east, but with this much greater spread between the rivers it seems entirely proper to distribute it more equitably across the state than is done in the rates proposed by the defendants.

Keeping in mind the first-class rate of 60 cents at Des Moines established in *Greater Des Moines Committee v. C., R. I. & P. Ry. Co.*, 17 I. C. C., 57, and the 52-cent rate at Cedar Rapids established in the original report in this case, we fix the first-class rates to and from points between Cedar Rapids and the Mississippi River by grading down, according to distance, the 52-cent rate to the 37.5-cent basis applicable at Clinton and Davenport. Similarly we determine the first-class rates to apply to points between Cedar Rapids and Des Moines in the range between the 52-cent rate at Cedar Rapids and the 60-cent rate at Des Moines. Points between Des Moines and the Missouri River will take first-class rates in the range between 60 cents and 80 cents substantially as measured by the distance from the Mississippi River. This plan is not strictly followed in fixing rates to points on the Chicago, Burlington & Quincy. As Burlington is the most distant crossing on any direct line between Chicago and Omaha a somewhat higher basis has been applied. On this line the Ottumwa rates are slightly lowered from the basis established in *Ottumwa Commercial Club v. C., B. & Q. Ry. Co.*, 17 I. C. C., 413; but this is necessary under the different rate conditions that will obtain in this territory after the conclusions reached in this report shall have been made effective.

The 80-cent scale now in force at the Missouri River is found to bear the following percentage relation to first class:

Class.....	1	2	3	4	5	A	B	C	D	E
Per cent....	100	81.25	56.25	40	33.67	40	33.67	27.5	23.125	20

while the Minnesota scale, which the carriers seek to have applied here, is as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Per cent....	100	83½	66½	50	40	45	35	30	25	20

The application of the present Missouri River scale of percentages to the lowered first-class rates across the state results in a schedule of rates which we regard as too low, while the application of the Minnesota scale, as we have seen, would result in rates that are too

high. The rates herein fixed as reasonable rates for the future are based on a scale of percentages as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Per cent.....	100	80	60	45	35	40	32½	27½	22½	20

This scale is lower than the present Missouri River scale by 1½ per cent on second class, 1½ per cent on class B, and ½ per cent on class D, and higher by 3½ per cent on third class, 5 per cent on fourth class, and 1½ per cent higher on fifth class, while classes A, C, and E remain unchanged. It is not suggested for general application, but is adopted in the particular case before us only because it seems under all the circumstances to give us a schedule of class rates more in harmony with our findings herein than either the present percentage scale or the one in use in Minnesota.

Upon the whole record we conclude and find that any scale of class rates between Chicago and points taking the same rates and points in Iowa will be unreasonable for the future if in excess of a scale in harmony with the rates to and from illustrative points as follows:

	1	2	3	4	5	A	B	C	D	E
Illinois Central:										
Farley.....	45	36	27	20	16	18	15	12	10	9
Delaware.....	50	40	30	23	18	20	16	14	11	10
Manchester.....	52	42	31	23	18	21	17	14	12	11
Independence.....	54	43	32	24	19	22	18	15	12	11
Waterloo.....	56	45	34	25	20	22	18	15	13	11
Cedar Falls.....	57	46	34	26	20	23	19	16	13	11
Ackley.....	59	47	35	27	21	24	19	16	13	12
Iowa Falls.....	60	48	36	27	21	24	20	17	14	13
Webster City.....	64	51	38	29	22	26	21	18	14	13
Fort Dodge.....	65	52	39	29	22	26	21	18	15	13
Tara.....	68	51	41	31	24	27	22	19	15	14
Rockwell City.....	71	57	43	32	25	28	23	20	16	14
Chicago, Milwaukee & St. Paul:										
Delmar Junction.....	42	34	25	19	15	17	14	12	10	9
Marion.....	52	42	31	23	18	21	17	14	12	11
Tama.....	57	46	34	26	20	23	19	16	13	11
Pickering.....	58	46	35	26	20	23	19	16	13	12
Melbourne.....	60	48	36	27	21	24	20	17	14	13
Slater.....	60	48	36	27	21	24	20	17	14	13
Perry.....	68	54	41	31	24	27	22	19	15	14
Manning.....	75	60	45	32	26	30	24	21	17	15
Chicago & North Western:										
De Witt.....	42	34	25	19	15	17	14	12	10	9
Wheatland.....	45	36	27	20	16	18	15	12	10	9
Cedar Rapids.....	52	42	31	23	18	21	17	14	12	11
Fairfax.....	53	42	32	24	19	21	17	15	12	11
Tama.....	57	46	34	26	20	23	19	16	13	11
Marshalltown.....	59	47	35	27	21	24	19	16	13	12
State Center.....	60	48	36	27	21	24	20	17	14	13
Grand Junction.....	68	54	41	31	24	27	22	19	15	14
Jefferson.....	69	55	41	31	24	28	22	19	16	14
Carroll.....	73	58	44	32	26	29	24	20	16	15
Chicago, Rock Island & Pacific:										
Iowa City.....	52	42	31	23	18	21	17	14	12	11
Grinnell.....	57	46	34	26	20	23	19	16	13	11
Newton.....	59	47	35	27	21	24	19	16	13	12
Colfax.....	60	48	36	27	21	24	20	17	14	13
Des Moines.....	60	48	36	27	21	24	20	17	14	13
Atlantic.....	75	60	45	32	26	30	24	21	17	15
Chicago, Burlington & Quincy:										
Fairfield.....	52	42	31	23	18	21	17	14	12	11
Ottumwa.....	55	44	33	25	19	22	18	15	12	11
Albia.....	57	46	34	26	20	23	19	16	13	11
Chariton.....	60	48	36	27	21	24	20	17	14	13
Oscola.....	64	51	38	29	22	26	21	18	14	13
Creston.....	69	55	41	31	24	28	22	19	16	14
Red Oak.....	78	62	45	32	27	31	25	22	18	16
Malvern.....	80	65	45	32	27	32	27	22	18	16

It is expected that the defendant carriers will publish rates to and from these and all intermediate points not exceeding those fixed herein, and will maintain them as maximum rates for a period of not less than two years. In order that the rates provided in this case may become effective contemporaneously with the rates which we require the carriers to establish in the related cases of this group of cases, permission is hereby given to make them effective in the regular manner on April 1, 1914, upon not less than five days' previous notice to the public and to the Commission. In order to preserve certain long-established relationships it will be necessary for the carriers to make some readjustments of their rates from Peoria and St. Louis to Iowa points, which for the most part will involve reductions but in a relatively few instances, as we are advised, will require rate increases. It will be understood that such readjustments may also be made effective on April 1, permission to do so on like notice being hereby granted.

29 I. C. C.

No. 4638.

COLORADO MANUFACTURERS' ASSOCIATION ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

No. 4011.

TRAFFIC BUREAU OF THE SIOUX CITY COMMERCIAL
CLUB ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Decided January 13, 1914.

Under the findings of the original report herein, 28 I. C. C., 82, reasonable commodity rates are fixed for the future between Chicago, Mississippi River, and Missouri River rate points on the one hand and Colorado common points on the other.

Dayton & Denious for Colorado Manufacturers' Association.

H. A. Scandrett for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In the previous report herein, 28 I. C. C., 82, we fixed the class rates between Chicago, Mississippi River, and Missouri River rate points on the one hand and Colorado common points on the other, using the five numbered classes as illustrative, at the following figures:

	1	2	3	4	5
Chicago.....	\$1.80	\$1.45	\$1.10	\$0.85	\$0.67
Mississippi River.....	1.62	1.27	1.01	.80	.63
Missouri River.....	1.15	.92	.74	.60	.47

These figures, while not wholly satisfactory to the complainants, have been accepted by them, and the carriers have filed tariffs in accordance with the order entered.

With reference to the commodity rates, which were also attacked, we said, at page 90:

As heretofore stated, the Colorado Manufacturers' Association presents a long list of articles on which they desire the establishment of or reductions in the special

commodity rates to the Colorado common points from Chicago and the Mississippi River, as well as from the Missouri River. With one or two exceptions, Salt Lake City enjoys special rates on these commodities as the result of our decision in *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co., supra*. The record shows that there is little if any substantial need for these rates on a considerable number of the commodities named, and on others the proof is entirely insufficient to warrant us in fixing the rates prayed for. On the record, however, we find that the present rates applied on many commodities when moving to Colorado common points are unduly discriminatory in comparison with the rates applied on the same commodities when moving to Salt Lake City. There is need of a revision of the whole schedule of commodity rates to Colorado points. We shall not at this time, however, attempt a full statement with respect to the commodity rates, but shall look to the defendants to present for approval not later than October 1 a modified schedule of rates on specific commodities from Chicago and the Mississippi and Missouri rivers to common points in Colorado.

Several conferences have been had between representatives of the complainants and the carriers in an effort to agree upon the proper measure of the commodity rates to be established, but these conferences have been unproductive, and as an agreement between the parties in interest can not be reached it has become necessary for the Commission definitely to pass upon the matter.

In the original complaint 158 commodity rates were prayed for, but at our suggestion that the list ought not to be enlarged beyond the actual requirements of the shippers the representatives of the complainants subsequently reduced the number to 92. The carriers agreed to reduced rates on only 28 commodities, and as to those rates the wishes of the complainants were not fully met. We have carefully considered the matter and find, on the one hand, that the complainants have asked for rates too low as to some commodities and unnecessary departures from the established classification as to others, on the other hand, the carriers have failed to give the measure of relief which the situation warrants and requires.

Denver contends that because of the relatively easier transportation conditions between St. Louis and Denver than between Denver and Salt Lake City for the additional 509 miles to reach the latter point, the rates to Denver should be less, than those to Salt Lake City, proportionately as the mileage is less. In other words, it is urged that the much more difficult operating conditions over the Rocky Mountains should justify departure from the general principle that the greater the length of haul the less should be the rate per ton per mile.

We have been somewhat embarrassed in reaching a conclusion that would do full justice to all of the parties because of limitations under our orders in other cases. In *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, we prescribed rates on certain commodities to Salt Lake City, distant 1,421 miles from

the Mississippi River, and in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, we fixed rates on other commodities to Salina, distant 463 miles from St. Louis. Denver is intermediate between these points, at a distance of 912 miles from the Mississippi River. Illustrative of the situation are the following rates, fixed by the Commission from Mississippi River points:

Commodities.	To Salina.	To Salt Lake.
Agricultural implements.....	\$0.64	\$1.26
Beans.....	.42	.72
Canned goods.....	.42	1.10
Coffee.....	.42	.72

It is obvious that the spread between these rates is not sufficient to give much relief to Denver without seriously impairing the revenues of the carriers. The rates to the Colorado common points apply also south of that city into New Mexico and north to Cheyenne, in the state of Wyoming, and the rates to a large territory are made with reference to the Colorado common points. The real difficulty in which Denver jobbers find themselves is in the territory in western Colorado, along the main line of the Denver & Rio Grande, and in Wyoming, along the Union Pacific. The record is full of references to what the Denver jobbers call the "reload charge" as compared with what their competitors at the Missouri River pay. The aggregate freight charges paid on freight originating at the Atlantic seaboard and jobbed in the territory west of Denver; that is to say, the aggregate of the carload rate into the jobbing point and the less-than-carload rate thence to point of consumption is relatively higher than the aggregate charge under the class rates fixed by the Commission from the Missouri River to Salt Lake City, and applied also at destinations intermediate thereto, and the jobbing rate to the same points of consumption. The higher scale of class rates from Denver to the same destinations, both on the Denver & Rio Grande and the Union Pacific, makes the Denver jobber pay a higher aggregate charge than his competitors at the Missouri River towns. This is the "reload charge," and it is obvious that while this situation continues Denver will be at a disadvantage. The carriers propose now to increase the rates to Salt Lake City, because our order under which the present rates were made has expired by limitation. But the propriety of this course is not before us on this record and we are not to be understood as approving or disapproving it at this time. Such a solution of the problem will necessarily involve a delay, during which Denver jobbers will continue at a disadvantage. It is probable also that no final solution can be made without a general readjustment of the rates

throughout this territory; but as affording a present remedy we find the following to be the proper commodity rates per 100 pounds on carloads to Denver:

Commodity.	From Chicago.	From Mississippi River.	From Missouri River.
	Cents.	Cents.	Cents.
Agricultural implements, hand, viz: Forks, barley (wooden); forks, bay or manure; forks, spading; hoes; potato hooks; rakes (wooden or iron); scythes and snaths; shovels, spades, and scoops; in packages, min. c. l. weight, 30,000 pounds.....	98	93	73
Baking powders and mixtures for baking powder, min. c. l. weight, 30,000 pounds.....	85	80½	60
Lavatory basins (bowls), iron or steel, enameled, in packages or loose, packed in hay, straw, or similar material, min. c. l. weight, 30,000 pounds.....	85	80½	60
Beans and peas, dried (not roasted), split or whole, in sacks or barrels, min. c. l. weight, 40,000 pounds.....	61	58	46
Billiard tables (including toy billiard tables), t. d., including slates or marbles, cues, cue racks, ball racks, composition pool or billiard balls, composition shake balls (small balls used in bottles), shake bottles, pin-pool boards, billiard marker buttons, billiard bridges, billiard-cue tips, billiard chalk, and billiard-table covers (rubber), min. c. l. weight, 24,000 pounds.....	110	101	74
Books, blank, scrap or stub, file, and school composition books, in paper covers, and school tablets, boxed, min. c. l. weight, 30,000 pounds.....	85	80½	60
Bottles, wine or beer, and whisky or brandy bottles of similar shape, common flint, green, black, or amber (not including druggists' prescription bottles and bottles of similar shape, or flasks, any style finish); common soda-water bottles (not siphon), in bulk or in boxes, cases, or crates; min. c. l. weight, 30,000 pounds.....	62	50	47
Canned goods, preserves, fish, oysters, sauces, soup tablets, and mincemeat, described as follows: Canned goods, viz (following articles described under the heading of canned goods in current western classification): Baked beans and pork; meats, with vegetable ingredients; milk, condensed; fruit and vegetables, canned; pickles; meats, canned; olives; soups; spaghetti with cheese, in tin cans, boxed; table sauces, including catsup, horseradish (prepared), mustard (prepared), pepper sauce, and salad dressing; preserves; fruit butter; jelly; fish, canned, dried, smoked, salted, and pickled; oysters, pickled and cove; soup tablets and mincemeat, packed in accordance with requirements of the western classification, straight or mixed; min. c. l. weight, 30,000 pounds. [Note.—Canned goods in boxes, without tops or with tops not securely fastened, will not be accepted for shipment].....	67	63	50
Cans, tin (including tin boxes, tin lard cans, tin lard pails, and milk cans), in packages or bulk, min. c. l. weight, 30,000 pounds.....	68	65	51
Carpets, other than cork carpet, including art carpet (heavy burlap, stamped with paint, similar to oilcloth); rugs (invoice value not exceeding \$50 each), and mats, not metallic, fiber, or rubber, min. c. l. weight, 24,000 pounds.....	163	146	98
Cartridges (metallic or paper, for small arms only), loaded, if so marked on outside of packages, min. c. l. weight, 30,000 pounds.....	91	80	66
Chimneys and lantern globes, glass, in boxes, barrels, or crates; also glass lamp chimneys packed in double-faced corrugated pasteboard boxes; min. c. l. weight, 16,000 pounds.....	101	96	71
Clothing, viz: Merino and cotton knit underwear, cardigan jackets (cotton or woolen), and sweaters (cotton or woolen), in bales or in cases; cotton, merino, and woolen hosiery, cotton knit ribbing, and cotton knit wristbands, boxed; min. c. l. weight, 20,000 pounds.....	136	130	106
Cocoa and chocolate, in boxes, min. c. l. weight, 30,000 pounds.....	90	85	65
Coffee, green, in sacks, min. c. l. weight, 30,000 pounds.....	60	57	45
Coffee (including cereal coffee), roasted or ground, in boxes, barrels, or drums, min. c. l. weight, 30,000 pounds.....	67	63	47
Waste, manufactured, for packing or wiping: Woolen or woolen mixed with cotton or jute waste, in bags, barrels, or boxes in machine-pressed bales, straight or mixed min. c. l. weight, 24,000 pounds, subject to rule 8-B.....	85	80½	60
Drugs (not including spices and mustard), medicines, and chemical, medicinal oils, witch-hazel, medicinal and flavoring extracts, medicinal and surgical plasters, surgical dressings, and absorbent cotton, boxed, min. c. l. weight, 30,000 pounds.....	114	108	84
Dry goods: Blankets (horse), burlap duck, and shoddy, any quantity.....	121	116	90
Cotton piece goods, any quantity, viz: Cotton fabrics (made wholly of cotton) in the original piece (but not finished articles ready for immediate use), packed in rolls, covered with burlap, or in boxes or bales; brown cotton bagging; cotton shoddy lining; cotton warp; cotton yarn; shade cloth; and window holland: plain, uncut, and undecorated, in bales, o. r. c. or in boxes.....	116	110	86

Commodity.	From Chicago.	From Mississippi river.	From Missouri river.
	Cents.	Cents.	Cents.
Cotton duck and denims, min. c. l. weight, 30,000 pounds.....	89	85	67
Cotton drills, cotton sheetings, and cotton bagging, bleached or unbleached, min. c. l. weight, 30,000 pounds.....	89	85	67
Earthenware, plumber's, viz: Washbowls, water-closet bowls, and urinals, min. c. l. weight, 24,000 pounds.....	94	90	78
Freezers, ice-cream, as described in items 4 to 13, inclusive, page 135 of western classification No. 52.....	110	101	74
Furniture, net cost of each piece enumerated not to exceed the following, viz: Bedsteads or folding beds (wooden), value \$14 each, bureaus \$20 each, chiffoniers \$20 each, small tables (not including extension tables) \$5 each, washstands \$8 each, straight or mixed c. l., min. c. l. weight, 20,000 pounds.....	85	80	62
Glass, window—common, boxed, min. c. l. weight, 30,000 pounds.....	64½	50½	27½
Glassware, as described in item 18, page 148, of western classification No. 52, min. c. l. weight, 24,000 pounds.....	85	80½	60
Glucose, or corn sirup, in barrels, min. c. l. weight, 30,000 pounds.....	55	52	42
Grease, axle (not machine lubricant), including mineral or petroleum axle grease, min. c. l. weight, 30,000 pounds.....	67	63	47
Grindstones (and frames), mounted or unmounted, min. c. l. weight, 30,000 pounds.....	59	56	43
Handles, wooden, in boxes, crates, or bundles, as follows: Axes, adze, pick, sledge, hatchet, hammer, mallet, fork, hoe, rake, shovel, and peavy, min. c. l. weight, 30,000 pounds.....	80½	74	58
Hardware, viz: Adzes, with or without handles, boxed; and axes with or without handles, boxed; and axes with handles exposed and blades boxed or crated, min. c. l. weight, 30,000 pounds.....	97	92	82
Hangers, rollers, and rail, barn door; hangers, parlor door (including tracks for same), min. c. l. weight, 30,000 pounds.....	67	63	47
Incubators and brooders, min. c. l. weight 24,000 pounds, subject to rule 6-B of the western classification.....	96	90	68
Ink, writing, in glass or earthenware, packed in barrels or boxes, or in paper bottles in barrels or boxes; and mucilage and library paste in glass or earthenware, packed in barrels or boxes, or in metal cans in barrels or boxes; min. c. l. weight, 30,000 pounds.....	80½	74	58
Insulators, terra cotta, clay, glass, or porcelain, including insulators (similar to conduits) for use in buildings for protection against fire; also telegraph pins and brackets, in boxes, barrels, crates, or hogheads; min. c. l. weight 30,000 pounds.....	64	60	46
Bolts, nuts, washers, nutlocks, rivets, lag bolts, and lag screws; min. c. l. weight, 30,000 pounds.....	63	60	47
Butts and hinges (except spring), in boxes, kegs, barrels, or casks; min. c. l. weight, 30,000 pounds.....	67	63	47
Iron and steel, articles of, viz: Chain n. o. s., min. c. l. weight, 40,000 pounds.....	63	60	45
Hinges, spring, boxed; min. c. l. weight, 30,000 pounds.....	89	85	67
Nails and spikes (not including railroad spikes or ship and boat spikes), cut or wire, n. o. s., in boxes or kegs; wire (fence), iron or steel, smooth, annealed, plain or galvanized; barbed, galvanized, or painted staples; wire hoops; min. c. l. weight, 40,000 pounds.....	61	58	47
Pig iron, min. c. l. weight, 60,000 pounds.....	32	30	24
Pipe—wrought iron or steel—welded, seamless, or lock bar (including boiler flues not over 12 inches in diameter), min. c. l. weight, 40,000 pounds.....	80	45	26
Shafting, plain, without connections, min. c. l. weight, 40,000 pounds.....	59	56	43
Plate and sheet iron (exclusive of planished or Russia), plain or galvanized; black, painted or corrugated, V crimped and roll capped, ridge rolls, iron or steel roofing or siding, and iron or wooden cleats, straight or mixed, c. l., min. weight, 40,000 pounds.....	50½	47½	34½
Shoes, horse, mule, and ox, including toe calks, in boxes or kegs, min. c. l. weight, 40,000 pounds.....	59	56	45
Steel, tool or drill, min. c. l. weight, 36,000 pounds.....	68	60	47
Lanterns (not including magic, paper, or toy lanterns), in boxes, barrels, casks, or crates, min. c. l. weight, 20,000 pounds.....	96	90	71
Lawn mowers, hand (with or without grass catchers), boxed or crated, min. c. l. weight, 24,000 pounds.....	85	80½	66
Liquors, as follows: Alcohol (including wood alcohol), and high wines, in bulk, in barrels or drums, min. c. l. weight, 24,000 pounds.....	84	80	66
Lye (concentrated) and potash, in cans, boxed, min. c. l. weight, 40,000 pounds.....	52	50	40
Matches, in paper or wooden boxes, packed in metallic or wooden cases, min. c. l. weight, 24,000 pounds.....	79½	75	57
Matting, mats, and rugs, grass, in bundles, min. c. l. weight, 30,000 pounds.....	79	75	58
Mince-meat and pie preparations, in glass, earthenware, boxed; in paper boxes, boxed; in pails or tubs when packed in boxes, crates, or barrels; in kits or kegs; or in bulk in barrels or half barrels, min. c. l. weight, 30,000 pounds.....	64	60	46
Nails, horse, in boxes, min. c. l. weight, 30,000 pounds.....	62	58	44
Tin plate, min. c. l. weight, 60,000 pounds.....	58	53	41

Commodity.	From Chicago.	From Mississippi River.	From Missouri River.
Nuts, edible, n. o. s. (not shelled), in packages, min. c. l. weight, 24,000 pounds.....	Cents. 110	Cents. 101	Cents. 74
Offcloth (floor), linoleum, wood grain, flooring, and cork carpet, boxed or crated, carrier's convenience, straight or mixed c. l., min. c. l. weight, 24,000 pounds.....	85	90½	60
Offcloth, n. o. s., boxed, crated, or wrapped min. c. l. weight, 30,000 pounds.....	85	90½	60
Paper, building, n. o. s., roofing and felt (including indented paper), min. c. l. weight, 40,000 pounds.....	53	50	40
News print, in boxes, bundles, or crates, min. c. l. weight, 50,000 pounds, in rolls 40,000 pounds.....	53	50	38
Wrapping paper, n. o. s., in bundles, boxes, or crates, min. c. l. weight, 30,000 pounds.....	53	50	38
Pulp board, as described in items 24 and 25 page 212 of western classification No. 52.....	47	42	31
Paper hangings (not including decoration sets), min. c. l. weight, 24,000 pounds.....	85	90½	60
Paper, book, not surface-coated or enameled, in bundles or boxes, min. c. l. weight, 50,000 pounds.....	56	52	36
Household refrigerators, straight c. l., min. weight, 20,000 pounds, subject to rule 6-B of current western classification, or in mixed c. l. with cooling rooms, k. d., as described in current western classification, min. weight, 20,000 pounds, subject to rule 6-B of said classification.....	85	90½	60
Rice, c. l. min. weight, 40,000 pounds.....	58	55	41
Rubber boots and shoes, including tennis shoes (canvas tops), boxed, min. c. l. weight, 24,000 pounds.....	122	115	87
Rubber rings for fruit jars, in boxes or barrels, min. c. l. weight, 30,000 pounds.....	79	75	59
Sad irons (not including electric sad irons nor gas, gasoline, charcoal, or alcohol burning sad irons), and sad-iron handles and stands, in boxes or barrels, min. c. l. weight, 30,000 pounds.....	62	60	46
Scales and scale beams (not including computing scales, gold-weighting scales, nor assayers' or apothecaries' scales), all fragile parts boxed or crated, min. c. l. weight, 24,000 pounds.....	80	75	56
Seed: Alfalfa, beet, clover, grass, hemp, mustard rape, bird, timothy, millet, and canary, Kafir-corn seed, broom-corn seed, also wheat, corn, pop corn, oats, peas, and beans, min. c. l. weight, 30,000 pounds.....	67	63	47
Seed, vetch, in packages, min. c. l. weight, 30,000 pounds.....	67	63	47
Sheep dip, liquid, declared value not exceeding 6 cents per pound, in barrels, min. c. l. weight, 30,000 pounds.....	48	45	35
Sheep dip, liquid, invoice value exceeding 6 cents per pound, min. c. l. weight, 30,000 pounds.....	58½	55½	41½
Shingles, iron, steel, or tin, min. c. l. weight, 30,000 pounds.....	60	56	42
Shoes, head, rings, tires, or dies (for quartz mills), also cams and tappets, iron or steel, min. c. l. weight, 40,000 pounds.....	64	60	46
Soap, invoice value 10 cents or less per pound and so receipted for; soap powders, washing powders, powdered washing soda, washing and scouring compounds, not liquid and not including bluing, straight or mixed c. l.; also borax, in straight c. l. or in mixed c. l. with soap; min. weight, 36,000 pounds.....	67	62	40
Tin articles as described in items 15 to 25, inclusive, page 258, and in items 1 and 2, page 259, of western classification No. 52.....	85	80½	60
Stove boards, boxed or crated, min. c. l. weight, 30,000 pounds.....	64	60	46
Syrup (corn, glucose, malt, maple, and rock candy) and molasses, min. c. l. weight, 30,000 pounds.....	53	50	40
Twine and cordage, viz: Cotton, flax, hemp, jute, fleece, sail, spring, sisal, manila, and cotton seine twine and cordage, and fish-netting twine (cotton), in bales, boxes, or barrels; rope, all kinds except wire or hair; min. c. l. weight, 30,000 pounds.....	80	75	55
Varnish, in barrels or in cans, boxed, straight c. l., or in mixed c. l. with paints, as described on page 81 of transcontinental west-bound tariff 1-J (agent R. H. Counthess's I. C. C. 904, supplements thereto or reissues thereof), taking same rate in c. l., min. c. l. weight, 30,000 pounds.....	67	63	47
Wall coating and wall finish, viz: Coldwater paints, dry sizings, and dry prepared wall finishes, in boxes, barrels, or casks, min. c. l. weight, 40,000 pounds.....	51	48	38
Wheelbarrows (k. d.), wheelbarrow wheels, and barrel carts (k. d.), min. c. l. weight, 24,000 pounds.....	73	69	55
Window-curtain poles, window-shade rollers, wooden or tin, with or without springs; window-shade slats, wooden, and fixtures for same, min. c. l. weight, 24,000 pounds.....	79	75	61

An order will be entered to give effect to our findings herein.

29 I. C. C.

RATES TO NORTH CAROLINA POINTS.

IN THE MATTER OF APPLICATIONS Nos. 8806 AND 8807, OF THE ATLANTIC COAST LINE RAILROAD COMPANY, CHESAPEAKE & OHIO RAILWAY COMPANY, NORFOLK & WESTERN RAILWAY COMPANY, SEABOARD AIR LINE RAILWAY, AND SOUTHERN RAILWAY COMPANY, FOR THEMSELVES AND ON BEHALF OF M. P. WASHBURN AND THORNTON LEWIS, THEIR DULY AUTHORIZED AGENTS, AND ON BEHALF OF THEIR CONNECTIONS PARTICIPATING IN THE TRAFFIC AS SET OUT IN LIST OF PARTICIPATING CARRIERS IN AGENT M. P. WASHBURN'S I. C. C. No. 93, AGENT THORNTON LEWIS' I. C. C. No. 860, AND NORFOLK & WESTERN I. C. C. No. 3800, SUPPLEMENTS THERETO AND REISSUES THEREOF, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION RESPECTING CLASS AND COMMODITY RATES FROM OHIO RIVER CROSSINGS, ST. LOUIS, MO., AND MEMPHIS, TENN., TO STATIONS IN THE STATE OF NORTH CAROLINA.

Submitted February 6, 1914. Decided March 3, 1914.

Authority should be granted to establish the rates proposed from Ohio River crossings and St. Louis, but the rates proposed from Memphis should be established as proportional rates only, applicable on business originating in territory west of the Mississippi River, and so limited in their application as to prevent increase of discrimination against intermediate points of origin.

Henry Thurtell for Interstate Commerce Commission.

R. Walton Moore, M. P. Callaway, and Alfred P. Thom for petitioners.

E. L. Travis, W. T. Lee, George P. Pell, and T. W. Bickett for Corporation Commission of the State of North Carolina, interveners.

J. C. Forester and J. T. Ryan for Chambers of Commerce of Greensboro, Rocky Mount, and Wilson, N. C., North Carolina Wholesale Grocers' Association, Southern Furniture Manufacturers' Association, and Just Freight Rate Association of North Carolina, interveners.

Charles Kimmich for Traffic Bureau of Knoxville, Tenn., intervener.

Littleford, James, Ballard & Frost, Francis B. James, and E. E. Williamson for Chambers of Commerce of Richmond, Norfolk, Petersburg, and Roanoke, Va., interveners.

Samuel W. Williams and J. G. Pollard for State Corporation Commission of Virginia, intervener.

W. S. Creighton for Charlotte Shippers' and Manufacturers' Association and Greater Charlotte Club, interveners.

REPORT OF THE COMMISSION.

CLARK, Chairman:

In these applications relief from the long-and-short-haul rule of the fourth section of the act is sought in order to establish reduced class and commodity rates from the Ohio River crossings, St. Louis, Mo., and Memphis, Tenn., to stations in the state of North Carolina. All rates are stated herein in cents per 100 pounds. The rates from Cincinnati and Louisville to all stations in the eastern part of the state of North Carolina have hitherto been made in the following manner:

The rates from Chicago to Cincinnati and Louisville are subtracted from the rates from Chicago to the Virginia cities. The remainders on the first six classes are as follows:

32 28 22 15 12 10.

These remainders form a set of proportional rates from Cincinnati and Louisville to the Virginia cities applicable upon business to the Carolinas. To these proportional rates are added the rates from the Virginia cities to eastern North Carolina points, and the sums so formed constitute the through rates from Cincinnati and Louisville. On this basis carriers have published through rates to the principal points in eastern North Carolina. The rates from the Virginia cities so used are called proportional rates, but they are in substance and effect the local rates.

The rates from Cincinnati and Louisville to nearly all of the stations in the western part of the state of North Carolina are constructed by the use of unpublished proportionals from Cincinnati and Louisville to Paint Rock, N. C. These proportionals are 75 per cent of the rates from Cincinnati to Atlanta, Ga. To these proportionals are added the local rates from Paint Rock to the various points of destination, and the sums so formed constitute the through rates from Cincinnati and Louisville.

The rates to nearly all the stations in North Carolina west of Hildebran are constructed by the use of the Paint Rock combination, while the rates to nearly all the stations in the state east of that point are made by the use of the Virginia cities combination.

To obtain through rates from the lower Ohio River crossings to points in Carolina territory the following differentials are added to the rates from Cincinnati on classes one to six:

10 10 8 8 6 4.

To obtain through rates from St. Louis to Carolina territory the following differentials on classes one to six are added to the Cincinnati rates:

33 29 22 15 13 10.

To obtain through rates from Memphis to points in Carolina territory the following differentials are added to the Cincinnati rates:

8 8 6 6 4 2.

It will thus be seen that there is a definite and fixed relation between the rates from Cincinnati and Louisville to these stations in North Carolina and the rates from the other Ohio River crossings, from St. Louis and from Memphis. In the adjustment that is proposed the rates from Cincinnati to North Carolina points will be constructed by adding to the proportional rates above named to the Virginia cities certain proportional rates from the Virginia cities which are approximately 20 per cent less than the present local rates. This has the effect of reducing the through rates from Cincinnati and Louisville to the destinations in North Carolina, which reductions in most cases are the following, on classes one to six:

11 8 8 6 6 4.

The rates from the lower Ohio River crossings, from St. Louis, and from Memphis will be reduced by the same amounts as are the rates from Cincinnati. The rates from Ohio River crossings and from St. Louis, if authorized, will be established without increase of discrimination or any discrimination whatever against intermediate points of destination via the direct lines. Some discrimination will, however, be brought about against intermediate points of destination in North Carolina upon indirect lines, but these increases appear to be in all cases due to the geographical position of the various points, and the rates grade normally southward from the Virginia cities toward the southern border of North Carolina. On the rates from Memphis some increases in discrimination against points of origin will result if these applications are granted. The carriers suggest, however, that if the Commission is unwilling to allow the readjustment to be made from Memphis by changing the local rates as proposed, a set of proportional rates be published from that point to North Carolina stations applicable on business coming from west of the Mississippi River, and assert that the resulting rates will not be less than from intermediate points east of the Mississippi River. The carriers operating via routes through Knoxville, Tenn., and Atlanta, Ga.,

desire to meet the reductions via the Virginia cities, which are outlined above, and in so doing will bring about some increases of discrimination against intermediate points of origin and of destination.

In order to more clearly show the present and proposed rates from the points of origin named, when applied via the Knoxville gateway, the present and proposed rates on the first six classes from Cincinnati and Louisville to stations on the main line of the Southern Railway from Knoxville, through Asheville, Hickory, Salisbury, Greensboro, and Raleigh to Goldsboro, and stations on the Atlantic Coast Line Railroad, south of Goldsboro to Wilmington, are here shown:

Rates from Cincinnati and Louisville to—	1	2	3	4	5	6
STATIONS ON THE SOUTHERN RAILWAY.						
East of Knoxville to and including Asheville:						
Present.....	99	88	77	65	55	46
Proposed.....	94	84	76	60	50	40
Biltmore:						
Present.....	104	92	81	69	57	47
Proposed.....	101	90	77	60	50	41
Asheles and Swannanoa:						
Present.....	110	96	84	70	57	48
Proposed.....	101	90	77	60	50	41
Black Mountain:						
Present.....	112	98	85	70	57	48
Proposed.....	101	90	77	60	50	41
Ridgecrest:						
Present.....	114	100	86	70	57	48
Proposed.....	101	90	77	60	50	41
Old Fort:						
Present.....	116	101	86	70	57	48
Proposed.....	101	90	77	60	50	41
Greenslee:						
Present.....	116	102	86	70	57	48
Proposed.....	101	90	77	60	50	41
Marion:						
Present.....	116	102	86	67	55	47
Proposed.....	101	90	77	60	50	41
Norbo to Hildebran, inclusive:						
Present.....	116	102	86	67	55	47
Proposed.....	101	90	77	60	50	41
Hickory:						
Present.....	112	98	82	65	53	42
Proposed.....	101	90	77	60	50	41
Conover to Eufoia, inclusive:						
Present.....	112	98	82	65	53	42
Proposed.....	101	90	77	60	50	41
Statesville to Salisbury, inclusive:						
Present.....	100	86	70	53	45	35
Proposed.....	89	78	62	47	39	31
Spencer to Lexington, inclusive:						
Present.....	100	86	70	53	45	35
Proposed.....	89	78	62	47	39	31
Thomasville and High Point:						
Present.....	98	84	68	51	44	34
Proposed.....	87	76	60	45	38	30
Jamestown:						
Present.....	97	84	68	51	44	34
Proposed.....	86	76	60	45	38	30
Greensboro to Goldsboro, inclusive:						
Present.....	93	79	64	47	40	31
Proposed.....	82	71	56	41	34	27
STATIONS ON THE ATLANTIC COAST LINE RAILROAD.						
Dudley to Gordon, inclusive:						
Present.....	100	86	70	53	45	35
Proposed.....	89	78	62	47	39	31
Wilmington:						
Present.....	82	68	53	41	32	26
Proposed.....	82	68	53	41	32	26

The present rates from Cincinnati to Durham and Winston-Salem via the Norfolk & Western Railway are:

84 71 57 42 37 29

while the proposed rates are:

82 70 56 40 33 27

It will be seen from the above that the disparities now existing between the rates to stations on the line of the Southern Railway. Old Fort to Hildebran, inclusive, as compared with the rates to stations Greensboro to Goldsboro, inclusive, are the following on classes one to six:

22 22 22 23 17 17

while if the proposed adjustment is authorized the resulting differences will be as follows:

19 19 21 19 16 14

The stations on the Southern Railway between Asheville and Knoxville now take higher rates than do the stations Greensboro to Goldsboro, inclusive, while the reductions which are made to the first-named stations are less than to those last named. This results in some increases in discrimination to these intermediate points. Upon the whole, however, the reductions proposed have the effect of decreasing discrimination against intermediate points for the reason that the higher rated points, Old Fort to Hildebran, inclusive, receive larger reductions than do the stations east thereof now taking lower rates made via the Virginia cities. The reductions also have the effect of decreasing discrimination against all these points as compared with the rates in effect through the Virginia cities to Wilmington, Newbern, and other coast points. No reductions are made to the coast points, while the reductions to most of the interior points on classes one to six are:

11 8 8 6 6 4

The reductions named apply to approximately 700 stations in the state of North Carolina, including most of the larger cities in that state, such as Charlotte, Greensboro, Goldsboro, Raleigh, Salisbury, and Statesville. Greater reductions than those named above are made to approximately 120 stations, and less reductions than those named are made to about 250 stations. The net result is to reduce the through rates from the points of origin named to practically all the stations in North Carolina approximately 10 per cent.

Some consideration must be given to the effect of these reductions upon stations on the route of the Southern Railway through Asheville to North Carolina points. The present rates from Knoxville to Greensboro on classes one to six are as follows:

84 74 64 50 43 30

These are higher than the proposed rates from Cincinnati to Greensboro by the following differences:

2 3 8 9 9 3

Some revision of the rates from Knoxville and other points is proposed, and the effect of this revision may be summarized as follows:

Rates from Knoxville, Jellico, Harriman, and Chattanooga, Tenn., to points in North Carolina will not exceed the proposed reduced rates from Cincinnati to Salisbury and points west thereof.

Revised rates from Knoxville and Morristown to Salisbury will not exceed the revised rates from Cincinnati to Salisbury.

Revised rates from Morristown, Knoxville, Middleboro, Jellico, Harriman, and Chattanooga to points west of Salisbury will not exceed the rates to Salisbury.

Revised rates from Morristown, Knoxville, Middleboro, Jellico, Harriman, and Chattanooga will be observed as maxima from intermediate points of origin.

To that portion of North Carolina east of Salisbury and Charlotte to which the proposed rates from Cincinnati are the same as to Charlotte, Salisbury, and Statesville, the present rates from Cincinnati are not lower than from Knoxville. The rates from Knoxville will exceed the proposed rates from Cincinnati to the following extent on classes one to six:

0 1 2 5 4 9

To Greensboro and points to which the proposed rates from Cincinnati are the same as to Greensboro, the present rates from Knoxville, as to which no change is proposed, exceed the proposed rates from Cincinnati to the following extent on classes one to six:

2 3 8 9 9 6

In brief, it may be said that the effect of these reductions will be to bring about some increases in discrimination against Knoxville, Morristown, and other points, as compared with Cincinnati, in rates to the territory lying east of Salisbury, but there will be no discrimination against Knoxville as a point of origin in rates to the territory lying west of Salisbury.

The proposed reductions are the result of compromise and agreement between the carriers operating in the state of North Carolina on the one hand and the Corporation Commission of North Carolina and other state officials and authorities representing the shipping interests of that state upon the other. The corporation commission, through its chairman and the attorney general of the state, intervened in this proceeding, earnestly urging that the applications be granted. The Board of Trade of Morristown, Tenn., filed a petition of intervention, but did not appear at the hearing. The Corpora-

tion Commission of Virginia also filed a petition of intervention, and the attorney general of that state appeared at the hearing and the argument and filed a brief opposing the granting of the applications. The Traffic Bureau of Knoxville, through its manager, appeared at the hearing and filed a brief in opposition to the applications. The chambers of commerce of Richmond, Norfolk, Petersburg, and Roanoke, Va., intervened and presented testimony and argument opposing the applications.

The city of Knoxville urges that it is intermediate to Cincinnati and Louisville on the routes from those cities to North Carolina via Asheville and is approximately 300 miles nearer to all stations in North Carolina than is Cincinnati, and that the rates from Knoxville to North Carolina points should in no case exceed the rates from Cincinnati. Knoxville is 310 miles from Cincinnati and 286 miles from Louisville and is directly intermediate on the Asheville route from those cities to Carolina points. The short route to all that portion of North Carolina west of Greensboro and to some of the southern portion of the state is via Asheville. Knoxville is approximately 300 miles nearer to destinations in the western and southern portions of North Carolina than is either of the Ohio River cities named. The short line, however, from Cincinnati and Louisville to the eastern and northern portions of the state is via the Virginia cities and the density of traffic of the lines operating via those gateways very greatly exceeds that of the line through Knoxville. The revised rates from Knoxville to Salisbury and points west thereof will not exceed the proposed rates from Cincinnati. The proposed rates from Cincinnati to stations east of Salisbury will be established without discrimination via direct lines through the Virginia cities. The line through Asheville is operated through a mountainous and sparsely populated territory and is clearly at a disadvantage in making rates to the territory east of Salisbury. It may well be as a final and permanent determination that the rates from Knoxville to much of this territory should not be higher than from Cincinnati. These applications are, however, for a temporary order authorizing the carriers to establish and continue the rates proposed only until such time as the Commission may act upon their general applications for relief from the provisions of the fourth section with respect to rates from the Ohio River crossings, St. Louis, and Memphis to Carolina territory. There is nothing in the testimony on behalf of Knoxville that points to the conclusion that any of the present distributing territory of Knoxville will be taken away by reason of this proposed adjustment.

The objection made by the Virginia cities and by the Corporation Commission of Virginia to the proposed adjustment may be stated as follows: That the advantage hitherto possessed by the

Virginia cities is an advantage to which they are entitled by reason of their location on strong lines of railroad enjoying a high traffic density. The establishment of these rates to Carolina points is an attempt on the part of North Carolina shippers to take away from the Virginia cities an advantage rightfully theirs. It is further urged that the establishment of these rates by the carriers is not a voluntary act upon their part but has been brought about by duress and coercion exercised by the governor, the legislature, and the Public Service Commission of the state of North Carolina, and that the proposed adjustment of rates to North Carolina is the price of a dearly purchased peace between the carriers of North Carolina and the shippers, newspapers, and public officials of that state. However brought about, the duty of this Commission is to examine the rates themselves, their relationship one to another, their effect, and to determine under all the circumstances what is the just, the reasonable, and the lawful thing to do.

By the establishment of these rates the discrimination in rates from all the points of origin named to all the destinations involved in North Carolina will be diminished as compared with the rates to the ports and as compared with the rates to the Virginia cities via the routes through Asheville and Atlanta. No discrimination will be increased as to points of origin via routes through the Virginia cities. No discrimination will be increased as to points which are intermediate to the North Carolina ports, and as to all those points the discrimination against such points as compared with rates to the ports will be diminished. The route through Asheville which is the route seeking the main relief is at a substantial disadvantage as against its competitors through the Virginia cities. No particular present hardship will result to Knoxville, Morristown, and other intermediate points of origin.

The proposed rates from Memphis may be established as proportional rates applicable on traffic originating in territory west of the Mississippi River and may be established without increase of discrimination against intermediate points of origin.

In Charlotte Shippers' Assn. v. S. Ry. Co., 11 I. C. C., 108, the Commission had occasion to examine the rates from western points to Charlotte and other points in North Carolina. We then found the low rates to the Virginia cities and the relatively high rates to points in North Carolina to be a source of irritation and complaint, and the view was expressed that such rates would always be regarded by the shippers as an injustice and that their discontent would prove an embarrassment to the roads. The Commission recommended that the carriers consider the establishment of rates which should be produced by the addition to the proportional rates to the Virginia cities of something less than the full locals from the

Virginia cities to points of destination in North Carolina. That, as we see it, is what will be brought about by this adjustment, and we fail to see in the contention of the Virginia cities how undue discrimination or any discrimination whatever against those cities will result from the proposed adjustment, which, in principle, accords with the adjustment prescribed by us for Durham and Winston-Salem in *Corporation Commission of N. C. v. N. & W. Ry. Co.*, 19 I. C. C., 303. An order will be entered authorizing the establishment of the rates proposed from the Ohio River cities and St. Louis and the establishment of the proposed proportional rates from Memphis.

29 I. C. C.

No. 5472.
CHARLES K. PARRY & COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY.

Submitted May 10, 1913. Decided October 10, 1913.

Charges collected by defendant for the storage of a carload of lumber at Camden, N. J., not found to have been unreasonable or unjustly discriminatory. Complaint dismissed.

Walter B. Saul for complainant.

Henry Wolf Biklé for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Charles K. Parry is engaged in the wholesale lumber business at Philadelphia, Pa., under the name of Charles K. Parry & Company. By complaint filed January 23, 1913, he assails as unreasonable and unjustly discriminatory certain charges collected by defendant for the storage at Camden, N. J., of an interstate carload shipment of lumber. The shipment was consigned to complainant and arrived at Camden on September 18, 1911, and in accordance with instructions by complainant was placed for delivery to C. B. Coles & Sons. The lumber was refused by Coles & Sons, and on October 13, 1911, complainant was notified of such refusal, with request for further instructions. At the same time he was advised that if an order for the disposition of the car was not furnished on or before October 16, 1911, the lumber would be unloaded and stored at owner's risk and expense. No order was given by complainant, and on October 31, 1911, the lumber was unloaded by defendant in its yard at Camden, near other lumber stored for its own use, at the most suitable available place for its safe storage. On May 17, 1912, complainant was again requested by letter to advise disposition of the lumber, and the record indicates that like request was several times made by telephone. No instructions were given, however, until October 7, 1912, when complainant directed that the shipment be forwarded to another destination, which was done. Certain demurrage charges accrued before the car was unloaded, and there were also charges for unloading and reloading. As to these charges complainant makes no objection.

There is published in defendant's tariff a provision relating to storage of carload freight, which was in effect during the time the lumber remained in storage, the material parts of which are as follows:

Coarse carload freight, such as scrap iron, structural iron, iron pipe, rough stone, rough lumber, cooperage stock, or similar freight not handled through the railroad company's warehouse, which is unduly delayed on account of refusal, or which may be unclaimed or undelivered for any other cause, may be unloaded from cars upon the property of the company, when practicable, subject to a charge * * * to cover cost of unloading and * * * an additional rental charge while on the property of the company * * * Sundays and legal holidays not included, * * * if held over six (6) days * * * not in excess of \$1 per car per day.

Under this provision the defendant assessed against the shipment rental or storage charges for 288 days, at the rate of \$1 per day, excluding Sundays and legal holidays, amounting to \$288. No question is raised as to the tariff authority for the charge, but complainant alleges that \$1 per day was unreasonable and unjustly discriminatory, and reparation is asked on the basis of a reasonable charge for the service rendered.

To sustain its contention complainant refers to another provision contained in defendant's tariff to the effect that lumber not susceptible to damage by exposure to the weather, arriving in carloads at Philadelphia, Pa., via defendant's line, may, when storage space is available, be unloaded by the owner from the cars and stored in defendant's yards at Ingleside station, Norris street, North Philadelphia, and Tioga street, at a charge of \$2 per month or fraction thereof. The allegations of unreasonableness and of unjust discrimination appear to be based entirely upon the fact of the lower storage charge in effect at the points named in Philadelphia. No other evidence upon the issues was submitted at the hearing.

In explanation of the situation at Philadelphia it was testified that defendant owns certain real estate in that city and in order to stimulate the shipment of lumber via its lines, instead of via the water route, it established this low and noncompensatory storage charge; that the same low storage rate has not been established at Camden, though just across the river from Philadelphia, for the reasons, (1) that defendant owns no ground available for the purpose at that point, and (2) that the inducements thereto from competitive conditions are not such as obtain at the larger lumber market in Philadelphia.

The charge provided for in defendant's tariff, to be assessed in cases like the one now before us, is not imposed for the purpose of gain or profit, but as a means of preventing accumulation on the property of the carrier of lumber or other freight of the kinds de-

scribed, and of avoiding congestion and inconvenience that must necessarily result from such accumulation. The record shows that defendant endeavored at various times to secure from complainant an order for the disposition of the lumber in question, so as to clear its yard. There is evidence of record which tends to show that the lumber might have been stored at some place in Camden provided with facilities for such service at from \$12 to \$15 per month. The question here, however, is not as to the reasonableness of the charge from a viewpoint of compensation for the service. The purpose of the tariff was rather to impose a charge that would serve to prevent the unnecessary and improper accumulation of lumber and other coarse carload freight at stations on defendant's lines, by making it of interest to shippers to promptly provide for the disposition of such freight. The storage charge is not confined to Camden, but with few exceptions applies generally to stations on defendant's lines.

The record discloses no unjust discrimination against the complainant. He is a dealer in Philadelphia and has the benefit of the storage charges at the points named in that city. If discrimination were involved at all, it would be discrimination against Camden and not against this complainant. We are not informed of any complaint by the business interests of Camden, or by any lumber dealer at that point, against the situation as it now exists.

In finding as we do in this case we must not be understood as approving the present form of defendant's tariff rule hereinbefore quoted. The statement that the charge for unloading and storing will be "not in excess of \$1 per car per day" is not a clear and definite statement of what the charge will be. The rule should be made specific and definite without delay.

Under the facts of record we do not find the charges complained of to have been either unreasonable or unjustly discriminatory. An order will be entered dismissing the complaint.

INVESTIGATION AND SUSPENSION DOCKET No. 277.
STRAW RATES FROM STATIONS IN MISSOURI TO
ALTON, ILL.

Submitted November 17, 1913. Decided March 3, 1914.

Proposed increased rates on straw from Missouri points to Alton, Ill., found reasonable and order of suspension vacated.

A. B. Cronk and Isaac Born for Alton Box Board & Paper Company.

R. D. Williams and C. S. Burg for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Rates on straw under review were first published by the Missouri, Kansas & Texas Railway Company in 1910, at the request of the Alton Box Board & Paper Company, a concern established about that time at Federal, Ill., for the manufacture of strawboard. Missouri, Kansas & Texas Railway tariff, I. C. C. No. A-3541, provides joint proportional commodity rates on straw in carloads from stations on the Missouri, Kansas & Texas Railway, in Missouri, to Alton, Ill., when destined to Federal. Supplement No. 1 proposes cancellation of this tariff, the result being application of the specific commodity rates to Alton proper. Alton is located 26 miles north of St. Louis, on the east bank of the Mississippi River, and Federal is 2 miles southeast thereof, on the line of the Illinois Terminal Railroad Company. A charge is made by the Illinois Terminal Railroad Company of \$2 per car on straw from connecting lines at Alton to industries located at Federal.

The tariff in question was suspended upon protest of the Alton Box Board & Paper Company.

The proportional rates range from 5 cents at West Alton, Mo., to 6½ cents at North Jefferson, the latter point 122 miles distant from Alton. To Alton proper the present rates are from 5½ cents to 9½ cents. Rates to Alton bear a bridge toll of 1½ cents per 100 pounds. The effect of the proposed cancellation will be to replace straw on the same basis with hay, as is usual in western and official classification territories. This would bring about an increase of from three-fourths cent to 3 cents per 100 pounds. However, a large part of

the straw shipments originate between West Alton and St. Charles, Mo., nearby points, from which places the increase is from three-fourths cent to 1 cent.

The Missouri, Kansas & Texas Railway Company asserts that the low rates were predicated upon an understanding with protestant that it would receive a liberal share of the outbound movement of the manufactured product, which, it was agreed, would be in the ratio of one ton of the product to two of the raw material; that this agreement has not been adhered to by the protestant; that such respondent has been given the short haul on much of the outbound movements which it has received; and that the revenue on the traffic has been too small to warrant the continuance of the low rates under existing conditions. The protestant claims that it has substantially lived up to its agreement with this respondent when allowance is made for the accumulated tonnage of the raw material in its yards, and that the present rates are more than compensatory. We are asked to condemn the increased rates, to declare unreasonable those now in effect, and to prescribe reasonable charges for the future.

The rates in question will be considered without regard to the agreement stated, which is extraneous to the issue. The reasonableness of a rate must be determined irrespective of contractual obligations of a particular shipper. It is in evidence that in central freight association territory a scale of rates is employed based upon a charge of \$7 per car of 38 feet 6 inches and under for a 50-mile haul, and \$1 for each additional 25 miles. This scale is applied by roads east of the Mississippi River to Federal, and other Illinois points operating board mills, although Federal is not in central freight association territory. While this has value for the purpose of comparison, it is by no means conclusive of the unreasonableness of rates in western territory. Aside from the fact that rates in central freight association territory are upon a lower basis generally than in western territory, strawboard may also be manufactured of scrap paper, and whereas 20 years ago 80 per cent of the board was made of straw, less than 6 per cent is now built of that material as a result of conditions in cities where more material may be had directly. It is, therefore, not improbable that this has had its influence upon the straw rates in central freight association territory.

Emphasis is given the fact that the Chicago, Burlington & Quincy Railroad has in effect a joint commodity rate of $5\frac{1}{2}$ cents to Federal from points east of Mexico, Mo. On the other hand, the Wabash Railroad publishes, from this general territory to Federal, through joint rates via East St. Louis of from 8 cents to $9\frac{1}{4}$ cents per 100 pounds. The Missouri Pacific Railway has established, via East St. Louis, joint commodity rates on straw to Alton and Federal,

at Lake Junction, Mo., to 100 pounds at Jefferson City, Mo. This portion of the Missouri Pacific runs along the south bank of the Missouri River, with the Missouri, Kansas & Texas Railway, and the north bank of the river. Although in the Missouri and Missouri Pacific roads the terminal expenses are greater than that of the Missouri, Kansas & Texas, the difference would not account for the respective rates.

The Commission stated the proportional rates are from 5 cents to 10 cents, the current rates to Alton proper, 5½ to 9½ cents. This Commission finds that the application of the present proportional rates results, with few exceptions, in lower through rates on shipments to Alton proper. A statement of the movement into Federal from points of origin named in the report for April, 1911, to and including July, 1913, shows that the average revenue per car after deducting bridge toll \$9.30 is that there are no strawboard mills in Missouri of the Missouri, Kansas & Texas Railway, and no movement was made from its stations prior to the establishment of Federal, thereby indicating that operation of the mill in the commodity a commercial value which theretofore have. This of itself is not sufficient to condemn the present rates, which, upon all the facts of record, we find to be justified by the respondents. An order will be entered suspending the suspension.

29 I. C. C.

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No. 5375.

NORMAN LUMBER COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted October 16, 1913. Decided March 3, 1914.

Complainants allege undue discrimination against Louisville, Ky., in favor of other Ohio River crossings, in the adjustment of inbound and outbound rates on lumber rehandled at those points on its way from equidistant points in southeastern territory to equidistant points in central freight association territory and from Mississippi valley territory to western termini and trunk line territory. Louisville's disadvantage is in large measure attributed to the fact that the northern carriers charge a bridge toll which is reflected in the rates from Louisville to points north, while the southern carriers do not add a bridge toll in making rates from producing territory to north-bank Ohio River crossings:
Held, That—

1. The question of the absorption of bridge tolls is largely one of policy with the carrier, and it may absorb or not so long as the alternative adopted does not place an undue burden upon a shipper or locality. The southern carriers can not elect to absorb all or part of the bridge toll on traffic to north-bank points if to do so results in the undue prejudice and disadvantage of points on the south bank. The bridge toll may not be absorbed at one crossing and added to the rate at a competitive crossing.
2. The northern carriers should discontinue the absorption of the switching charges on lumber from Covington and Newport to Cincinnati, or eliminate the bridge toll in the rates from Louisville.
3. While the present differentials may be proper for western termini and trunk line points within 500 miles of Cincinnati, the rates from Louisville to points over 500 miles from Cincinnati should not exceed the rates from Cincinnati by more than $2\frac{1}{2}$ cents per 100 pounds.
4. Rates on lumber from equidistant southeastern territory to Louisville should be 1 cent less than those contemporaneously maintained to Cincinnati, New Albany, or other north-bank crossings. Should northern carriers elect to remove the discrimination in favor of Covington and Newport by eliminating the bridge toll in the rates from Louisville, no change will be required in the rates to Louisville from equidistant southeastern points.
5. Rates from Mississippi valley territory to Louisville should be $3\frac{1}{2}$ cents less than those contemporaneously maintained to Cincinnati from points within 500 miles of Louisville, and $2\frac{1}{2}$ cents less from points at a greater distance.
6. On the movement from Mississippi valley territory to central freight association territory via Cairo and via Louisville it would seem that the disparity in rates via the two crossings is in some instances too great. No reason has been shown why the spread from producing points in the south should not be uniform for the same difference in distances to Cairo and Louisville.
7. Differentials diminish with the increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination. *Williams Co. v. V. S. & P. Co.*, 16 I. C. C., 482.

ranging from $8\frac{1}{2}$ cents per 100 pounds at Lake Junction, Mo., to $11\frac{1}{2}$ cents per 100 pounds at Jefferson City, Mo. This portion of the line of the Missouri Pacific runs along the south bank of the Missouri River and parallel with the Missouri, Kansas & Texas Railway, which extends along the north bank of the river. Although in the case of the Wabash and Missouri Pacific roads the terminal expenses may be somewhat greater than that of the Missouri, Kansas & Texas Railway, it is evident that the difference would not account for the variance in the respective rates.

As heretofore stated the proportional rates are from 5 cents to $6\frac{1}{2}$ cents, and the current rates to Alton proper, $5\frac{1}{2}$ to $9\frac{1}{2}$ cents. This would indicate that the application of the present proportional rates and switching charge results, with few exceptions, in lower through rates than apply on shipments to Alton proper. A statement of the straw movement into Federal from points of origin named in the tariff from April, 1911, to and including July, 1913, shows that the average haul was 49.7 miles, average weight per car 27,455 pounds and the average revenue per car after deducting bridge toll \$9.30.

The testimony is that there are no strawboard mills in Missouri on the line of the Missouri, Kansas & Texas Railway, and no movement of straw was made from its stations prior to the establishment of the mill at Federal, thereby indicating that operation of the mill has given to the commodity a commercial value which theretofore it did not have. This of itself is not sufficient to condemn the proposed increased rates, which, upon all the facts of record, we find to have been justified by the respondents. An order will be entered vacating the suspension.

No. 5375.

NORMAN LUMBER COMPANY ET AL.

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted October 16, 1913. Decided March 3, 1914.

Complainants allege undue discrimination against Louisville, Ky., in favor of other Ohio River crossings, in the adjustment of inbound and outbound rates on lumber rehandled at those points on its way from equidistant points in south-eastern territory to equidistant points in central freight association territory and from Mississippi valley territory to western termini and trunk line territory. Louisville's disadvantage is in large measure attributed to the fact that the northern carriers charge a bridge toll which is reflected in the rates from Louisville to points north, while the southern carriers do not add a bridge toll in making rates from producing territory to north-bank Ohio River crossings:

Held, That—

1. The question of the absorption of bridge tolls is largely one of policy with the carrier, and it may absorb or not so long as the alternative adopted does not place an undue burden upon a shipper or locality. The southern carriers can not elect to absorb all or part of the bridge toll on traffic to north-bank points if to do so results in the undue prejudice and disadvantage of points on the south bank. The bridge toll may not be absorbed at one crossing and added to the rate at a competitive crossing.
2. The northern carriers should discontinue the absorption of the switching charges on lumber from Covington and Newport to Cincinnati, or eliminate the bridge toll in the rates from Louisville.
3. While the present differentials may be proper for western termini and trunk line points within 500 miles of Cincinnati, the rates from Louisville to points over 500 miles from Cincinnati should not exceed the rates from Cincinnati by more than $2\frac{1}{2}$ cents per 100 pounds.
4. Rates on lumber from equidistant southeastern territory to Louisville should be 1 cent less than those contemporaneously maintained to Cincinnati, New Albany, or other north-bank crossings. Should northern carriers elect to remove the discrimination in favor of Covington and Newport by eliminating the bridge toll in the rates from Louisville, no change will be required in the rates to Louisville from equidistant southeastern points.
5. Rates from Mississippi valley territory to Louisville should be $3\frac{1}{2}$ cents less than those contemporaneously maintained to Cincinnati from points within 500 miles of Louisville, and $2\frac{1}{2}$ cents less from points at a greater distance.
6. On the movement from Mississippi valley territory to central freight association territory via Cairo and via Louisville it would seem that the disparity in rates via the two crossings is in some instances too great. No reason has been shown why the spread from producing points in the south should not be uniform for the same difference in distances to Cairo and Louisville.
7. Differentials diminish with the increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination. *Williams Co. v. V. S. & P, Ry. Co.*, 16 I. C. C., 482.

Hines & Norman for complainants.

R. Walton Moore, Charles J. Rizzy, jr., and William A. Northcutt for Illinois Central Railroad Company; Louisville & Nashville Railroad Company, Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and other southern carriers.

William A. Northcutt for Louisville & Nashville Railroad Company.

William W. Collin, jr., for Cleveland, Cincinnati, Chicago & St. Louis Railway Company, and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

Edward Barton and S. S. Stewart for Baltimore & Ohio Railroad Company, Baltimore & Ohio Southwestern Railroad Company, and Cincinnati, Hamilton & Dayton Railway Company.

D. P. Connell for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This case involves a charge of undue discrimination against Louisville, Ky., in favor of other Ohio River crossings, notably Cincinnati, Ohio, in the adjustment of rates on lumber rehandled at those points while on its way from producing territory in the south to destinations in central freight association and trunk line territories. Complainants, situated at Louisville, Ky., buy lumber mainly from small mills which are unable to hold their product until enough has accumulated to make a carload of each grade. This lumber is shipped to complainants' yards at Louisville, where it is unloaded and sorted according to the kinds, grades, and dimensions of lumber and is then shipped out as required by the consuming trade in central freight association and trunk line territories. Competitors of complainants in the rehandling business are located at practically all of the river crossings. The through rates from points of origin to destinations in central freight association and trunk line territories via the various crossings are not brought into question; only the combinations of locals to and from the rehandling points are concerned in this case. Both the carriers south and those north of the river are made defendants.

In *Lumbermen's Exchange of St. Louis v. A. & S. R. R. Co.*, 24 I. C. C., 220, 225, we said with regard to the economic reason for the existence of rehandling yards:

The defendants suggest that there is little economic reason for the existence of these wholesalers in the handling of lumber; but this is hardly true. These dealers at St. Louis purchase the entire cut of a small mill, bring it to their yards, combine it with the product of other small mills which differ in kind and in quality, manufacture some portions of it perhaps, and ship to the retail yard in the smaller town, or to

1. The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science.

2. The second part of the paper is devoted to a detailed discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science.

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6. The sixth part of the paper is devoted to a detailed discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science.



cinnati by one-half cent per 100 pounds. The rate to New Albany which is immediately opposite Louisville on the Ohio River, is the same as to Louisville, except that in two instances it is 1 cent higher. From New Albany and Cincinnati rates are 1 cent lower than from Louisville, Ky., to the following approximately equidistant points north of the river: Anderson, Indianapolis, Logansport, and South Bend, Ind.; Bay City, Benton Harbor, and Mackinaw, Mich.; Chicago, Peoria, Quincy, and Springfield, Ill.; and to numerous other points in Indiana, Illinois, and Wisconsin (Eugene Morris, agent's, tariff I. C. C. No. 387). To a few points in southern Illinois and to certain of the western termini above referred to, Louisville pays no bridge toll for the reason that certain lines take freight from New Albany and Jeffersonville via Louisville, and can not make rates from Louisville higher than those from Jeffersonville and New Albany without violating the fourth section. The result of the combinations of locals to and from Louisville is that from equidistant producing territory to equidistant consuming territory Louisville is at a disadvantage in freight rates of 1 cent per 100 pounds as compared with north-bank Ohio River crossings. Complainants allege that there is undue discrimination in favor of the north-bank cities either by the carriers serving Louisville to the north, who allow the bridge toll to be reflected in the rate when the haul is for a considerable distance, or by carriers serving it from the south, who charge as much for the haul to Louisville as for the greater service in crossing the Ohio River.

This situation was in part covered by a former complaint also brought by the Louisville lumber dealers with the purpose of effecting a readjustment in rates to the Ohio River crossings. *Norman Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 239. In that case the carriers north of the river were not included as defendants and the entire situation was not before us as at present. Complainants placed the principal stress upon the rates to Cairo as compared with those to Louisville, and a very small amount of evidence was introduced as to rates to other Ohio River crossings. We found that Louisville was subject to undue prejudice, at least in so far as the rates to that city were greater than those to Cairo from substantially equidistant points. The carriers undertook to remove the discrimination by increasing the rates from southeastern territory to Cairo, and these increases were approved in *Investigation and Suspension Docket No. 115*, 24 I. C. C., 686.

However, in our opinion in the former *Norman Lumber Co. case*, *supra*, we expressly reserved for future consideration the question of bridge tolls, and on page 247 used the following language:

* * * There can be no doubt that Louisville, on the south bank of the river, ought not to pay inbound a rate which is sufficient to cover the transportation of traffic

to the north bank of the river, and then, when reshipping the traffic to the north, again pay an amount sufficient to cover the transportation across the bridge. In other words, Louisville ought not to be considered on the north bank of the river on inbound shipments and on the south bank of the river on outbound shipments.

It is evident that the conclusion expressed in the above quotation is correct. The problem before us is to fix the responsibility for Louisville's disadvantage and to suggest a remedy.

At the hearing and in briefs and argument complainants were inclined to place the blame upon carriers north of the river. They argue that the general tendency of carriers is to place cities on opposite banks of a river on the same basis. Complainants contend further that every point on the line receives the benefits which accrue from the existence of the bridge, and that the burden of constructing and maintaining an expensive bridge between two cities should not be imposed exclusively upon the traffic of those two cities or of either of them, but should be distributed just as the burden of constructing and maintaining any other link in the railroad system is distributed. In this connection, reference is made to our decision in *Traffic Bureau of Merchants' Exchange v. S. P. Co.*, 19 I. C. C., 259, 261, where we said:

* * * We do not recognize the right of a carrier to single out a piece of expensive road and make the local traffic thereon bear an undue portion of the expense of its maintenance or of its construction. A road is built and operated as a whole, and local rates are not to be made with respect to the difficulties of each particular portion, charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths. Upon this same road millions of dollars have recently been expended in building the Lucin cut-off just west of Ogden, a monumental bit of construction which traverses the Great Salt Lake. If rates from one side of the lake to the other were based upon the cost of this cut-off they would be unconscionable. If the position of the defendant were followed by the carriers generally (which it is not, nor even by itself) it would result in rates that would vary from mile to mile as the cost of road per mile varies.

It seems reasonable that a separate charge should not be assessed for crossing every costly bridge, and that ordinarily bridges must be regarded as a part of the entire system. That, however, is not necessarily true at all river crossings.

Almost invariably where bridge tolls are added to the through rate, their explanation is historical. Railroads were built to and from the great rivers. Particularly the Mississippi and the Ohio served as natural barriers at which railroads terminated and began. At first freight was unloaded at the river, and when destined to points beyond, was ferried across and loaded again into the cars of the carrier on the opposite bank. Later either the cars themselves were ferried across or bridges were built. The latter are maintained either by a separate bridge company, which may be independent of the carriers serving the crossing or owned by them, or maintained

by one or more of the carriers themselves. It is evident that no matter in whom the ownership may be, each carrier using the bridge should be required to contribute to its maintenance in proportion to the use made of it. The charges for bridges so maintained partake of the character of a fixed terminal charge. They should be based upon the cost of the service. If that be their basis, their diminution with the increased length of the haul would be improper. The question of the absorption of the charge then becomes one of policy with the carrier and it may absorb or not, so long as the alternative adopted does not place an undue burden upon a shipper or locality. In *Railroad Commission of Iowa v. I. C. R. B. Co.*, 20 I. C. C., 181, 188, it was urged that a bridge a mile long ought to be regarded as simply a mile of the carrier's track, and ought not to be the foundation for any separate or higher charge. Upon this point we said:

* * * This, however, is not the generally accepted view. By reason of the great cost of such structures a bridge has been regarded more or less generally as adding a constructive mileage to the carrier's line for which an additional charge may be exacted. Moreover, bridges are ordinarily built and operated by separate companies, although not infrequently, as in this case, the bridge companies are owned by the carrier or carriers that use the bridge. As a rule, the accounts of the bridge companies are kept separately and the rights of the owning carrier or carriers to use the bridge and the compensation therefor are established and controlled, as in this instance, by formal contract. The compensation is ordinarily fixed in the form of a definite toll per passenger and sometimes a more or less definite charge is assessed on freight. The carriers usually lay the burden upon the traveling and shipping public by adding the tolls to their regular fares and rates, and these additional charges have been recognized as valid by the Commission. *Freight Bureau of Cincinnati Chamber of Commerce v. C., N. O. & T. P. Ry. Co.*, 7 I. C. C., 180; *Commercial Club of Omaha v. C. & N. W. Ry. Co.*, 7 I. C. C., 386.

In *Freight Bureau of Cincinnati v. C., N. O. & T. P. Ry. Co.*, 7 I. C. C., 180, Cincinnati shippers objected to differentials against them and in favor of Louisville on southbound shipments. One of the defenses of the differential was that "The location of Cincinnati upon the north bank of the Ohio River subjected its traffic to an additional charge in crossing the river." On this branch of the case we said:

We think the location of Cincinnati upon the north bank of the Ohio River justifies, to some extent, a differential against her as to territory south of that river.

In view of all these considerations we do not believe that, in so far as competition with Cincinnati is concerned, the maintenance of rates from Louisville to central freight association territory which reflect the bridge toll for crossing the Ohio River and which in consequence thereof are 1 cent higher than rates from Cincinnati to equidistant points constitutes an undue discrimination against Louisville.

In so far as the northern lines are concerned, there remains the charge of undue discrimination because a bridge toll is included in the rates on lumber from Louisville to the north and is not included in rates from Covington and Newport. It was testified that the application of the Cincinnati rate from Covington and Newport is the result of absorbing the switching charge from those points, which are within the Cincinnati switching district. The switching absorption applies to all traffic, both classes and commodities. If there were rehandling yards at Covington and Newport, Louisville would be at a decided disadvantage. It was testified, however, in defendants' behalf, that there are no rehandling yards at Newport or Covington; that dealers at these points supply local demands only; and that consequently, the absorption tariff is a paper tariff in so far as it applies on lumber. Nevertheless the carriers north of the river should discontinue the absorption of the switching charges on lumber from Covington and Newport to Cincinnati, which has the effect of eliminating the bridge toll, or eliminate the bridge toll in the rates from Louisville by applying the same rates from that point to central freight association territory as from New Albany, Ind.

A minor point relating to the tariffs covering transit at Cincinnati of the Cleveland, Cincinnati, Chicago & St. Louis and the Baltimore & Ohio Southwestern was raised at the hearing. Complainants allege that Louisville is deprived of its natural advantage in rates from adjacent producing territory in Kentucky and Tennessee by transit tariffs which enable Cincinnati to rehandle lumber from this territory on the Louisville combination rate. On behalf of the Cleveland, Cincinnati, Chicago & St. Louis it was explained that it provided transit at Ivorydale, Cincinnati, because on traffic originating in a certain section of the south the southern roads do not absorb the switching charge from their interchange to Ivorydale. The transit tariff makes a \$3 per car charge for the transit privilege, and this has the effect of making the net charge in excess of the Cincinnati combination \$3 a car transit instead of \$5 a car switching. There appears to be no tariff on file with us which provides transit on the Cleveland, Cincinnati, Chicago & St. Louis at Cincinnati or Ivorydale, Ohio. It is stated on behalf of both roads that the purpose of the transit tariff was merely to protect the Cincinnati combination, and that in practice it did not produce the discrimination which complainants allege. It was conceded that the tariffs complained of were ambiguous, and it was proposed to file a new tariff, with the purpose of meeting complainants' objections. With that end in view, Baltimore & Ohio Southwestern Railroad tariff I. C. C.

6935 was filed August 7, 1913, effective September 15, 1913. This tariff is still in force. Item No. 16 reads in part as follows:

(a) Except as to shipments from the territory as provided in section (b) of this item, the through rate on lumber, timber, and products thereof, logs, staves, and ties shall be the lawfully published through rate thereon from the original point of shipment to final destination, in effect via the transit point at the time of the initial shipment from the point of origin, applicable according to the inbound billing, which these rules permit to be matched against outbound shipments, plus the transit charge.

(b) When the lumber, logs, timber, staves, or ties originate at points south of the Ohio River (except Louisville, Ky., and points on the Chesapeake & Ohio Railway and the Sandy Valley & Elkhorn Railway, the through rates from which points are covered by section (a) of this item) and at points west of the Mississippi River, the rate on lumber * * * shall be the lawfully applicable local or proportional rate thereon to the Ohio or Mississippi River crossing through which the same passes in its movement to the transit point, plus the local or proportional rate thereon from the same crossing to final destination, in effect as of date of shipment from point of origin. Illustration: If shipments cross the Ohio River at Cincinnati (except as noted herein), the combination of rates on Cincinnati will prevail; if lumber crosses the Ohio River at Louisville, the combination of rates on Louisville will prevail; * * *.

It would seem that the provisions are still ambiguous and that under a possible interpretation the combination via Louisville is still protected for the rehandler at Cincinnati. We suggest that the transit tariff maintained by the Baltimore & Ohio Southwestern be revised so as to state in plain and unambiguous terms what is alleged to be its only object, namely, the protection of the combination via Cincinnati.

The first part of the complaint is disposed of in so far as it affects rates from Louisville to points north of the river, and we will now consider its bearing upon rates from southern producing territory to Louisville. Here the question to be decided is whether the southern carriers unduly discriminate against Louisville by charging as much for the haul to Louisville as for the greater service in crossing the Ohio to north-bank points. As already indicated, complainants centered their attack upon rates from Louisville to the north. It was admitted by witnesses who testified in their behalf that the inbound rates at Louisville, Cincinnati, and other crossings, were properly adjusted. At the hearing and in briefs and argument, the southern carriers relied upon these admissions, and consequently presented little testimony with regard to the rates from equidistant southeastern territory. The statement is made on behalf of the Louisville & Nashville Railroad that, due to competition with other roads, they have been unable to charge the bridge toll at Cincinnati.

In *Manufacturers' & Merchants' Asso. v. A. & A. R. R. Co.*, 24 I. C. C., 331, complainants alleged that the practice of defendants in constructing rates from the south to New Albany, Ind., on a higher basis than to Louisville subjected New Albany to undue prejudice

and disadvantage. It was shown that rates from the south to other north-bank Ohio River crossings—Cincinnati, Evansville, and Cairo—are the same as the rates to the south-bank points, in view of which we upheld the allegations of the petition, and, on page 339 of the opinion, said:

We are therefore of opinion and find, considering all the facts, circumstances, and conditions appearing, that in maintaining from the territory south of the Ohio and Potomac and east of the Mississippi rivers, and on lumber from Arkansas, rates to Cairo, Ill., Evansville, Ind., and Cincinnati, Ohio, on the north bank of the Ohio River, which include no toll or charge for the bridge service from either East Cairo, Ky., Henderson, Ky., Covington or Newport, Ky., on the south bank of that river, while contemporaneously maintaining from the same points of origin to New Albany, Ind., on the north bank of said river, rates higher than to Louisville, Ky., on said south bank, by the amount of the bridge toll or charge, defendants are subjecting complainants and shippers of New Albany, Ind., to undue and unreasonable prejudices and disadvantages, from which an order will be entered to cease and desist.

In the instant case, it is the south-bank point that is complaining. The testimony clearly shows that the absorption of the bridge toll in the rates from southern producing points to north-bank crossings, while it is included in the rate from Louisville to points of consumption in the north, subjects Louisville to undue prejudice and disadvantage. Consequently, we must supplement our holding in the *New Albany case*, to the effect that the southern carriers can not elect to absorb all or part of the bridge toll on traffic to north-bank points if to do so results to the undue prejudice and disadvantage of points on the south bank. In other words, we will not allow the bridge toll to be absorbed at one crossing if it is included in the rate at a competitive crossing. The bridge tolls on lumber at Ohio River crossings, on local and through business, are as follows, in cents per 100 pounds:

Bridge tolls on lumber at Ohio River crossings.

From—	Local.	Through.
Louisville, Ky., to New Albany, Ind.....	2	1
Louisville, Ky., to Jeffersonville, Ind.....	2	1
East Cairo, Ky., to Cairo, Ill.....	3	2
Covington, Ky., to Cincinnati, Ohio (C. & O. Ry.).....	3	(1)
Newport, Ky., to Cincinnati, Ohio (C. & O. Ry.).....	3	(1)
Paducah, Ky., to Brookport, Ill. (L. C. & N. R. via ferry).....	3	2
Henderson, Ky., to Evansville, Ind.....	3	1
Covington, Ky., to Cincinnati, Ohio (L. & N. R. R.).....	3	1
Newport, Ky., to Cincinnati, Ohio (L. & N. R. R.).....	3	1

¹ Switching rate 25 cents per 2,000 pounds; maximum, \$3 per car; minimum, \$5.

In view of all these facts and circumstances, it is our opinion that the rates on lumber from equidistant southeastern territory to Louisville should be 1 cent less than those contemporaneously maintained to Cincinnati, New Albany, or other north-bank Ohio River crossings. Should the lines north of the river elect to remove the

discrimination in favor of Covington and Newport by eliminating the bridge toll in the rates from Louisville, no change will be required in rates to Louisville from equidistant southeastern points. This conforms to the idea expressed above that carriers may absorb a bridge toll when to do so does not cause undue discrimination.

We will now consider the second part of the complaint: That on shipments of lumber from producing territory in the Mississippi Valley south of the Ohio, east of the Mississippi and west of the line of the Mobile & Ohio Railroad, the combination of rates into Louisville and outbound to western termini and trunk line points, including seaboard cities, as compared with the Cincinnati combination of rates from the same territory of origin to the same markets of consumption, gives to the lumber dealers at Cincinnati an undue preference and advantage over complainants at Louisville.

From a large part of Mississippi valley territory the short-line distance to Cincinnati is through Louisville, and is, consequently, 114 miles (the distance from Louisville to Cincinnati) greater than the distance to Louisville. From the producing territory north of the line of the Alabama & Vicksburg Railway the differential against Cincinnati is 3 cents, while from producing territory south of this line it is generally 2 cents per 100 pounds. From Louisville to western termini and trunk line territory the short-line distance is through Cincinnati, and here the distance from Louisville is 114 miles greater than the distance from Cincinnati. For this difference in mileage the carriers north of the river make a difference in rates against Louisville almost uniformly of $3\frac{1}{2}$ cents per 100 pounds. Thus, while the difference in mileage is the same in the inbound and the outbound haul, the differentials maintained in the rates from producing territory are not the same as those maintained from Louisville and Cincinnati to the consuming territory. This is illustrated by the following table:

From—	Via Louisville, Ky.	Via Cincinnati, Ohio.	Difference
Pearl Haven, Miss., to Albany, N. Y.:			
South.....	19	21	2
North.....	21.5	18	3.5
Combination.....	40.5	39	1.5
Natalbany, La., to Baltimore, Md.:			
South.....	19	21	2
North.....	19.5	16	3.5
Combination.....	38.5	37	1.5
Enid, Miss., to Bessemer, Pa.:			
South.....	116	119	3
North.....	14	10	4
Combination.....	30	29	1
Winona, Miss., to Boston, Mass.:			
South.....	16	19	3
North.....	24.5	21	3.5
Combination.....	40.5	40	.5

¹ Cottonwood and gum, 3 cents less.

From—	Via Louis- ville, Ky.	Via Cin- cinnati, Ohio.	Difference.
Bentonla, Miss., to Buffalo, N. Y.:			
South.....	16	19	3
North.....	14	10	4
Combination.....	30	29	1
Arcoia, La., to New York, N. Y.:			
South.....	19	21	2
North.....	22.5	19	3.5
Combination.....	41.5	40	1.5
Parsons, Miss., to Philadelphia, Pa.:			
South.....	16	19	3
North.....	20.5	17	3.5
Combination.....	36.5	36	.5
Red Bay, Ala., to Pittsburgh, Pa.:			
South.....	17	19	2
North.....	14	10	4
Combination.....	31	29	2
Houston, Miss., to Rochester, N. Y.:			
South.....	19	21	2
North.....	16.5	12.5	4
Combination.....	35.5	33.5	2
Maben, Miss., to Salamanca, N. Y.:			
South.....	16	19	3
North.....	14	10	4
Combination.....	30	29	1
Enkl, Miss., to London, Ontario:			
South.....	16	19	3
North.....	14	12	2
Combination.....	30	31	1

¹ Cottonwood and gum, 3 cents less.

It will be noted that although the haul from producing territory to points of consumption is in each case the same via either crossing, Louisville is in each case at a disadvantage in freight rates of from one-half cent to 1½ cents per 100 pounds. Because the difference in mileage is the same for both the northern and southern roads while the differential applying over that mileage is greater on the northern than the southern roads, complainants allege that either the northern or else the southern roads are guilty of an unjust discrimination.

Complainants express approval of the practice of the roads south of the Ohio of decreasing the differential as the distance increases, and criticize the practice of the northern and eastern carriers of maintaining the same differential for small and great distances. They refer to the case of *Williams Co. v. V. S. & P. Ry. Co.*, 16 I. C. C., 482, where it was held that—

differentials diminish with the increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination.

On behalf of defendants it was stated that the establishment of rates to Louisville and other crossings from the south is entirely independent of the establishment of rates by the carriers operating from the river to the north and east; that the conditions controlling the two adjustments are so different as to justify the different bases of rates; and that to make the differentials between Cincinnati and Louisville the same for the carriers on one side of the river as those

maintained by those on the other side would practically put the rate-making power of the former in the hands of the latter. It is alleged that undue discrimination by one carrier can not be predicated upon the rate adjustment of another carrier.

On behalf of the carriers north of the river it is stated that the local rate from Louisville to New York was formerly 25 cents, being fixed by the percentage scale applying between central freight association and trunk line territories. The same scale fixed Cincinnati at 21.5 cents, 3.5 cents under Louisville. The proportional rates from Louisville and Cincinnati were 22.5 and 19 cents, respectively, creating the same spread of 3.5 cents. These proportional rates were, in 1902, made the local rates. In this way it is alleged the local rates from Louisville and Cincinnati became fixed at their present figure, under which the central freight association percentage basis differential between the two points is preserved. To change the differential maintained by the lines north of the river, it is alleged, would go counter to the rate-making and rate-grouping system prevalent in central freight association territory.

It is further alleged in defendants' behalf that it is not practicable to make the combinations of rates equal through the different crossings. The southern carriers give Louisville the same rate as Cincinnati in some cases and in others a 2-cent, 3-cent, or 4-cent differential under Cincinnati, according to the geographic relation of origin point to Cincinnati and Louisville, and it is alleged that if the northern roads equalize these differentials on the outbound haul they would have to carry at least four sets of differentials to be applied according to origin. This argument, however, is based upon the premise that complainants desire to be put upon an equality with Cincinnati as to all territory irrespective of distance or geographic conditions. The complainants do not ask for that. For example, on traffic moving from Chattanooga territory to trunk line territory complainants would not expect Louisville to be put on an equality with Cincinnati, as it would be an out-of-line haul via Louisville. Complainants have only asked to be placed upon an equality where the natural route is through either Louisville or Cincinnati.

On behalf of the southern carriers it is complained that the present differentials between Louisville and Cincinnati from producing territory are compelled by competition, and to prove this the history was given of the adjustment between Louisville and Cincinnati in rates on lumber from Mississippi valley territory. It was shown that prior to the construction of the Cincinnati Southern, which is now a part of the Queen & Crescent route (comprising the Cincinnati, New Orleans & Texas Pacific, the Alabama Great Southern, the New Orleans & North Eastern, the Alabama & Vicksburg, and the Vicks-

burg, Shreveport & Pacific) the difference in rates to the two cities was much greater than at present. From that part of Mississippi valley territory south of the Alabama & Vicksburg Railroad, west of the line of the Mobile & Ohio from Meridian, Miss., to Mobile, Ala., and east of a line drawn from Morton, Miss. (a point between Jackson and Meridian), to New Orleans, the short-line distance to Cincinnati is through Birmingham and Chattanooga via the Queen & Crescent route and is 87 miles longer than the short-line distance to Louisville via the line of the Louisville & Nashville. It is alleged that the competition of the Queen & Crescent route has decreased the differential between Louisville and Cincinnati below what would be normal under ordinary conditions, and that it is this competition which forces the differential down to 2 cents from points south of the line of the Vicksburg & Alabama Railroad.

It is stated on behalf of the carriers north of the Ohio River that the bridge toll is not reflected in the rates from Louisville to trunk line territory, and upon investigation we find that the rates to trunk line territory are the same from New Albany as from Louisville. A glance at the table given below, however, will show that, although the distance from Louisville to western termini and trunk line territory is greater, the revenue per ton-mile is higher than those prevailing from Cincinnati to the same points.

Rates on lumber, carload, from Louisville and Cincinnati.

To—	From Louisville, Ky.			From Cincinnati, Ohio.		
	Distance.	Rate per 100 pounds.	Revenue per ton-mile.	Distance.	Rate per 100 pounds.	Revenue per ton-mile.
	Miles.	Cents.	Mills.	Miles.	Cents.	Mills.
Wheeling, W. Va.....	372	14	7.52	258	10	7.75
Pittsburgh, Pa.....	437	14	6.56	313	10	6.39
Cumberland, Md.....	515	13	6.99	401	14	6.96
Buffalo, N. Y.....	560	14	5.00	446	10	4.48
Salamanca, N. Y.....	574	14	4.88	460	10	4.34
Hagerstown, Md.....	613	19	6.36	499	16	6.41
Rochester, N. Y.....	628	16	5.25	514	12	4.86
Hornell, N. Y.....	654	16	5.04	540	12	4.63
Washington, D. C.....	663	19	5.88	553	16	5.78
Harrisburg, Pa.....	676	19	5.77	562	16	5.69
Baltimore, Md.....	707	19	5.61	593	16	5.39
Syracuse, N. Y.....	708	18	5.08	594	14	4.71
Reading, Pa.....	730	20	5.61	616	17	5.52
Utica, N. Y.....	762	20	5.25	648	16	5.09
Wilmington, Del.....	773	20	5.30	663	17	5.11
Philadelphia, Pa.....	780	20	5.26	666	17	5.10
Scranton, Pa.....	811	20	5.05	697	17	4.88
Albany, N. Y.....	857	21	5.02	743	18	4.83
Newark, N. J.....	862	22	5.22	748	19	5.06
New York, N. Y.....	871	22	5.16	757	19	5.02
New Haven, Conn.....	947	24	5.17	833	21	5.04
Springfield, Mass.....	960	24	5.10	846	21	4.96
Hartford, Conn.....	986	24	4.97	872	21	4.81
Worcester, Mass.....	1,015	24	4.82	901	21	4.66
Boston, Mass.....	1,069	24	4.62	945	21	4.44
Providence, R. I.....	1,069	24	4.62	945	21	4.44
Portsmouth, N. H.....	1,116	24	4.39	1,002	21	4.19
Portland, Me.....	1,174	24	4.18	1,060	21	3.96

In conformity with *Williams Co. v. V. S. & P. Ry. Co.*, *supra*, we hold that while the present differentials may be proper for points involved in this part of the complaint which are within 500 miles of Cincinnati, the rates from Louisville to the points of destination over 500 miles from Cincinnati should not exceed the rates from Cincinnati by more than 2½ cents per 100 pounds.

We have given due consideration to the arguments of the lines south of the Ohio that the present differentials in the rates to Louisville and Cincinnati have been fixed by competition. Although competition undoubtedly has had much to do in fixing the level of the rates to Louisville and Cincinnati and their relationship to each other, it has not had the effect of throwing the differentials out of line from a mileage standpoint. It seems that the present differentials correctly reflect the difference in distance to the two cities, disregarding, however, the necessity of crossing the Ohio in the haul to Cincinnati. As bearing upon this point the following quotation is given from the testimony of Mr. Dewberry, who appeared in behalf of the Louisville & Nashville Railroad:

If the rates from Louisville & Nashville stations to Louisville and Cincinnati were made on the straight mileage scale—that is, the primary basis of all the L. & N. rates—the difference on a 600-mile haul to Louisville would be about 2 cents; I have the figures here; I can give them to you exactly. Under that scale, Mr. Norman, I tested it out, and it seems to me it conforms with the true principle of rate making. The difference is larger where the distance into Louisville is shorter, and it gradually recedes until you get down to the end of the scale, which, I think, is about 900 miles where the difference is only about 1 cent.

We give below a table showing distances, rates per 100 pounds, and revenues per ton-mile from representative points in that part of Mississippi valley territory which is herein involved:

Rates on lumber, carload, to Louisville and Cincinnati.

From points in southeastern Mississippi valley territory.	To Louisville, Ky.			To Cincinnati, Ohio.		
	Distance.	Rate per 100 pounds.	Revenue per ton-mile.	Distance.	Rate per 100 pounds.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Jackson, Tenn.....	312	13	8.33	426	16	7.5
Dyersburg, Tenn.....	317	12	7.57	431	15	6.8
Bolivar, Tenn.....	366	15	8.19	480	18	7.8
Corinth, Miss.....	370	15	8.11	484	18	7.6
Memphis, Tenn.....	377	12	6.36	491	15	6.5
Holly Springs, Miss.....	409	15	7.33	523	18	6.9
Tupelo, Miss.....	419	15	7.16	533	18	6.3
Water Valley, Miss.....	455	18	7.91	569	20	7.6
Houston, Miss.....	457	19	7.03	571	21	7.5
West Point, Miss.....	466	18	7.72	580	20	6.9
Aberdeen, Miss.....	466	16	6.86	580	19	6.5
Bent oak, Miss.....	466	18	7.72	580	20	6.9
Bent oak, Miss.....	485	16	6.60	599	19	6.5
Ackerman, Miss.....	504	18	7.14	618	20	6.5

¹ Pine lumber.

² Hardwood lumber.

Rates on lumber, carload, to Louisville and Cincinnati—Continued.

From points in southeastern Mississippi valley territory.	To Louisville, Ky.			To Cincinnati, Ohio.		
	Distance.	Rate per 100 pounds.	Revenue per ton-mile.	Distance.	Rate per 100 pounds.	Revenue per ton-mile.
	Miles.	Cents.	Mills.	Miles.	Cents.	Mills.
Winona, Miss.....	507	¹ / ₁₈	¹ / _{7.1}	621	¹ / ₂₀	¹ / _{6.44}
		¹ / ₁₆	¹ / _{6.31}		¹ / ₁₉	¹ / _{6.11}
Greenwood, Miss.....	513	¹ / ₁₈	¹ / _{7.01}	627	¹ / ₂₀	¹ / _{6.38}
		¹ / ₁₆	¹ / _{6.23}		¹ / ₁₉	¹ / _{6.06}
Meridian, Miss.....	547	¹ / ₁₉	¹ / _{6.94}	633	¹ / ₂₁	¹ / _{6.63}
Yazoo City, Miss.....	569	¹ / ₁₈	¹ / _{6.32}	663	¹ / ₂₀	¹ / _{5.85}
		¹ / ₁₆	¹ / _{5.62}		¹ / ₁₉	¹ / _{5.56}
De Soto, Miss.....	578	¹ / ₁₉	¹ / _{6.57}	664	¹ / ₂₁	¹ / _{6.32}
Vicksburg, Miss.....	600	¹ / ₁₉	¹ / _{6.38}	714	¹ / ₂₁	¹ / _{5.88}
		¹ / ₁₅	¹ / _{5.00}		¹ / ₁₈	¹ / _{5.04}
Jackson, Miss.....	615	¹ / ₁₉	¹ / _{6.17}	729	¹ / ₂₁	¹ / _{5.76}
		¹ / ₁₇	¹ / _{5.52}		¹ / ₂₀	¹ / _{5.48}
Yellow Pine, Ala.....	623	¹ / ₁₉	¹ / _{6.10}	709	¹ / ₂₁	¹ / _{5.93}
Hattiesburg, Miss.....	632	¹ / ₁₉	¹ / _{6.01}	718	¹ / ₂₁	¹ / _{5.85}
Brookhaven, Miss.....	649	¹ / ₁₉	¹ / _{5.85}	763	¹ / ₂₁	¹ / _{5.60}
Beaumont, Miss.....	659	¹ / ₁₉	¹ / _{5.76}	776	¹ / ₂₁	¹ / _{5.41}
Mobile, Ala.....	671	¹ / ₁₉	¹ / _{5.67}	785	¹ / ₂₁	¹ / _{5.35}
Magnolia, Miss.....	680	¹ / ₁₉	¹ / _{5.59}	794	¹ / ₂₁	¹ / _{5.29}
Kentwood, La.....	695	¹ / ₁₉	¹ / _{5.46}	809	¹ / ₂₁	¹ / _{5.19}
New Orleans, La.....	778	¹ / ₁₉	¹ / _{4.88}	835	¹ / ₂₁	¹ / _{5.63}

¹ Pine lumber.² Hardwood lumber.

This table shows that the revenue per ton-mile is in almost every instance greater to Louisville than to Cincinnati. In the latter case the haul is longer by from 87 to 114 miles, and it is necessary to cross the Ohio River. This indicates that here again, as in the rates from equidistant points in southeastern territory, the southern carriers have disregarded the bridge toll in making rates to Cincinnati. We believe that in order to place Louisville upon an equitable basis as compared with Cincinnati, and in order to obviate the undue discrimination at present prevalent in the rates to these two points, the rates to Louisville should be $3\frac{1}{2}$ cents less from points within 500 miles of Louisville, and $2\frac{1}{2}$ cents less from points in Mississippi valley territory at a greater distance, than the rates contemporaneously maintained from the same points of origin to Cincinnati.

The result of the adjustment which we have herein prescribed in the rates from Mississippi valley territory to Louisville and Cincinnati and the rates from those points to western termini and trunk line territory will be to place these two cities upon a substantial equality as rehandling markets for lumber. From territory within 500 miles of Louisville to territory within 500 miles of Cincinnati the combinations of locals in and out will be the same as the combinations of locals in and out of Cincinnati; so also from territory over 500 miles distant from Louisville to territory over 500 miles distant from Cincinnati. From territory within 500 miles of Louisville to territory over 500 miles from Cincinnati, Louisville will have an advantage of 1 cent per 100 pounds. This, however, will be offset by a like advantage in rates which Cincinnati will enjoy from territory over 500 miles distant from Louisville to territory within 500 miles of Cincinnati.

Another matter which, although not specifically mentioned in the complaint, was brought up by complainants at the hearing and has received attention in briefs and argument, is that from Mississippi valley territory to central freight association territory, where the haul is approximately the same whether rehandled at Cairo or Louisville, Cairo has the advantage over Louisville of from 2 to 3 cents per 100 pounds in the rates on lumber. Defendants state that the adjustment of rates to Louisville from Mississippi Valley territory, as compared with the adjustment of rates to Cairo, was squarely before the Commission in the former case of *Norman Lumber Co. v. L. & N. R. R. Co.*, *supra*, and that the Commission, by its former report, expressly approved, and declined to disturb, this adjustment. The complaint in the former *Norman Lumber Co. case*, after calling attention to the differential of 2 cents in the rates from Memphis to Louisville and to Cairo, asked that from points south of Memphis on the Illinois Central and Yazoo & Mississippi Valley railroads the differential between Cairo and Louisville should not exceed 2 cents. Upon this point the Commission held, on page 245 of its report, as follows:

Complainants' second contention, that the rates to Louisville from points south of Memphis on the Yazoo & Mississippi Valley and Illinois Central railroads should not in any case exceed the rate to Cairo by more than 2 cents, does not appear to be well founded. By reference to the table above inserted, it will be seen that the rate from Memphis to Cairo proper yields revenue of 11.8 mills per ton per mile, while the rate of 12 cents to Louisville yields revenue of 6.4 mills per ton per mile. The rate from McComb, Miss., to Cairo proper is 14 cents and to Louisville 19 cents, but it will be noted that the 14-cent rate to Cairo yields revenue of 6.3 mills per ton per mile, while the 19-cent rate to Louisville yields revenue of 5.7 mills per ton per mile. The same relative revenue per ton per mile appears to obtain from other points south of Memphis where the differential in favor of Cairo exceeds 2 cents, and upon this record we are unable to find that the present rates to Louisville are unreasonable or unduly prejudicial.

We give below a table showing rates per 100 pounds from representative points in Mississippi valley territory to points in central freight association territory via Louisville and via Cairo:

From—	Via Louisville.						Via Cairo.					
	South.		North.		Combina- tion.		South.		North.		Combina- tion.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Natalbany, La., to Chicago, Ill.....	724	19	304	11	1,028	30	499	14	365	10	864	24
Enid, Miss., to Detroit, Mich.....	468	16	385	12	853	28	244	13	590	14	824	24
Winona, Miss., to Grand Rapids, Mich.	507	16	422	13	929	29	282	13	543	14	825	25
Bentonla, Miss., to South Bend, Ind....	590	16	289	11	879	27	357	13	398	12	785	25
Arcola, La., to Toledo, Ohio.....	706	19	325	12	1,031	31	481	14	529	14	1,010	25
Parsons, Miss., to Chicago, Ill.....	499	16	304	11	803	27	274	13	365	10	639	25
Red Bay, Ala., to Detroit, Mich.....	412	17	385	12	797	29	206	12	590	14	798	25
Houston, Misc., to Grand Rapids, Mich.	457	19	422	13	879	32	260	14	543	14	803	25
Maben, Miss., to South Bend, Ind.....	492	16	289	11	781	27	286	13	398	12	694	25
Pearl Haven, Miss., to Toledo, Ohio....	650	19	325	12	975	31	425	14	529	14	864	25

It will be noted that to a large portion of central freight association territory the distances as shown above are much shorter via Cairo than via Louisville, and consequently Cairo should properly have an advantage in rates. In some instances, however, it would seem that the disparity in the rates via the two crossings is too great, and it will also be noted that, although to certain points the distance via Cairo and Louisville is approximately the same, the combinations of locals differ. From the points of origin named in the table the distance to Louisville is in all cases approximately 225 miles in excess of the distance to Cairo, but the spread between the rates to the two points is in some cases 3 cents and in others 5 cents per 100 pounds. To the north the differences in distances from Cairo and from Louisville are not uniform. It seems that the carriers north of the river make a difference of 1 cent in the rate for a difference in distances within 100 miles and of 2 cents for differences that are greater. No reason has been shown why the spread from producing points in the south should not be uniform for a uniform difference in distances to Cairo and Louisville. In figuring what is a proper differential it must be borne in mind that the haul to Cairo necessitates crossing the Ohio River, while the haul to Louisville does not. Upon the present record we are unable to make any determination with regard to the rates from Mississippi valley territory via Cairo as compared with those via Louisville where the haul is approximately the same, but we bring this matter to the attention of the carriers.

We find that defendants unduly discriminate against Louisville to the undue preference and advantage of other Ohio River crossings in the adjustment of inbound and outbound rates on lumber rehandled at those points on its way from equidistant points in southeastern territory to equidistant points in central freight association territory and from Mississippi valley territory to western termini and trunk line territory. It is our determination that the carriers which serve Louisville to the north should either discontinue the absorption of the switching charges on lumber from Covington and Newport to Cincinnati or eliminate the bridge toll from the rates from Louisville by applying the same rates from that point to central freight association territory, as from New Albany, Ind., and these should in no instance be greater to equidistant points than those from Cincinnati, Ohio. The lines north of the river should maintain from Louisville to western termini and trunk line points over 500 miles from Cincinnati rates on lumber which do not exceed those from Cincinnati by more than 2½ cents per 100 pounds. Points in southeastern territory included in groups 1, 2, 2-A and 3 as shown in Hinton, agent's, tariff I. C. C. No. A-40 and supplement thereto are substantially equidistant from Louisville and Cincinnati. The carriers serving Louisville from the

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south will be required to maintain from these points to Louisville rates on lumber which are 1 cent less than those contemporaneously maintained to Cincinnati, New Albany, or other equidistant north-bank crossings. However, should the lines north of the river elect to remove the discrimination in favor of Covington and Newport by eliminating the bridge toll in the rate from Louisville, no change will be required in the rates to Louisville from equidistant southeastern points. The lines south of the river will also be required to maintain to Louisville rates $3\frac{1}{2}$ cents less than those contemporaneously maintained to Cincinnati from points in Mississippi valley territory south of the Ohio, east of the Mississippi, and west of the line of the Mobile & Ohio within 500 miles of Louisville, and $2\frac{1}{2}$ cents less from points over 500 miles from Louisville.

Carriers will be expected by May 1, 1914, to revise their tariffs in accordance with the views expressed in this report. Pending such revision the case will be held open for such further proceedings and order as the Commission may deem necessary. No reparation will be awarded.

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No. 5897.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted November 12, 1913. Decided March 3, 1914.

Complainant alleges undue discrimination against Paducah, Ky., in favor of Cairo, Ill., in rates on lumber from Mississippi, Louisiana, and that part of Arkansas which is south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock; *Held, That—*

1. Lumber from the Mississippi Valley does not meet such competition at Cairo as would justify the maintenance of lower rates there than to Paducah from equidistant producing points.
2. Rates to Paducah from substantially equidistant points in Mississippi and Louisiana east of the river should be no higher than 1 cent below those contemporaneously maintained from the same points to Cairo.
3. Rates to Paducah from substantially equidistant points in Arkansas and Louisiana west of the river on and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock should be no higher than those contemporaneously maintained from the same points to Cairo.
4. A carrier can not reserve to itself the long haul if to do so works unduly to the detriment of the shippers.
5. Cairo is on the north bank of the Ohio River and it is necessary to cross the Ohio in hauling to Cairo from southern producing points. This is an additional service over and above that rendered in hauling to Paducah, which is a south-bank point. Carriers should either charge a bridge toll on traffic in both directions at every Ohio River crossing or not charge it at any crossing. *Norman Lumber Co. v. L. & N. R. R. Co.*, 29 I. C. C., 565.

E. W. Hines, J. V. Norman, and W. F. Bradshaw, jr., for complainant.

R. Walton Moore and Merrill P. Callaway for Illinois Central Railroad Company and other defendants.

Fred G. Wright for St. Louis, Iron Mountain & Southern Railway Company, Missouri Pacific Railway Company, and Natchez & Southern Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

A. P. Humburg for the Yazoo & Mississippi Valley Railroad Company.

S. H. West, E. A. Haid, and R. D. Coleman for St. Louis Southwestern Railway Company.

G. B. Auburton for New Orleans Great Northern Railroad Company.

R. B. Scott for the Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This complaint concerns rates on lumber of all kinds to Paducah, Ky., as compared with rates to Cairo, Ill., from the states of Mississippi and Louisiana and that part of Arkansas which is south of the line of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark. From all this territory the short line distance is practically the same to Paducah as to Cairo; such slight differences as exist are in favor of Paducah. Nevertheless the rates on lumber are from 1 to 6 cents per 100 pounds higher to Paducah than to Cairo. It is alleged that at least in so far as the rates to Paducah exceed those to Cairo they are unjust and unreasonable and unduly discriminate against Paducah to the undue preference and advantage of Cairo.

The complaint is brought by the Paducah Board of Trade, a corporation, with headquarters at Paducah. While there are a number of manufacturers of lumber and wood articles at Paducah, it is stated that under the present combination of in and out rates rehandling yards are unable to locate there and compete successfully with those at Cairo. Several witnesses testified that although they lived at Paducah and would prefer to establish yards there, they were maintaining rehandling yards at Cairo, Metropolis, and Brookport, Ill., because of the more favorable rate situation at the latter points.

We will first consider the rates from the territory described east of the Mississippi River and then those from the territory west of the Mississippi.

From producing points east of the Mississippi and north of the line of the Alabama & Vicksburg Railway from Vicksburg to Meridian, Miss., rates on lumber are uniformly the same to Cairo and Paducah, while from points south of that line they are almost without exception 2 cents higher to Paducah. Lumber which is produced east of the river in the northern half of the Mississippi Valley as divided above is predominately hardwood, while that produced in the southern half is, in the main, pine. Defendants allege that in making rates to Paducah and Cairo from the hardwood territory they had to meet water competition from those parts of Kentucky and Tennessee which are tributary to the Tennessee, Cumberland, Ohio, and Mississippi rivers. It is stated that water competition controls the rates to Paducah as well as to Cairo, and that on this account the rates were made the same to both points

Defendants attempted to explain the difference in rates from the southern half of the Mississippi Valley to Cairo and Paducah on the ground that the pine does not grow along the rivers tributary to the Ohio and Mississippi, but rather back in the interior, where there is no water competition. It is alleged that the competition of other carriers, especially those west of the Mississippi River, and of other pine-producing sections controls rates from the southern half of the Mississippi Valley east of the river to Cairo; that this competition is not felt at Paducah as at Cairo, and that for this reason the rates to Cairo are 2 cents below the rates to Paducah.

In the hardwood territory the rates on cottonwood and gum are in many cases lower than those on other lumber. The only part of the hardwood territory where pine grows in a considerable quantity is along the branch of the Illinois Central from Aberdeen Junction to Aberdeen, Miss., and only from points along this branch line are separate rates maintained on pine lumber. These are 2 cents higher to Paducah than to Cairo, while from the same points and from all other points in the hardwood territory the rates on cottonwood and gum and those on other hardwoods are the same to Paducah as to Cairo. In the pine territory there is greater uniformity in the rates on the different kinds of lumber. From most points the rates on pine and hardwood are the same. At a few points on the Mississippi River, such as Vicksburg and Natchez, Miss., the rates on cottonwood and gum and other hardwoods are less than those on pine lumber, and, although the pine-lumber rates from these points are 2 cents higher to Paducah than to Cairo, the hardwood rates are the same to both points. This complaint does not attack the variations in the rates on the different kinds of lumber, and these are mentioned only to bring the entire rate situation before us.

Defendants' attempted justification of the maintenance of higher rates from the pine territory to Paducah than to Cairo, on the ground that carrier competition and market competition compel the rates to the latter point, loses its force when we consider that the rates from the Mississippi Valley east of the river to Cairo proper are lower than those to the same point from any other lumber-producing section. In *In the Matter of Rates on Lumber*, 24 I. C. C., 686, we had under consideration a proposed increase of from 1 to 5 cents per 100 pounds in rates from southeastern points to Cairo proper and found that they were not unreasonable. On page 690 of the opinion is found the following statement:

It is stated that Cairo, in fact, draws no lumber from this southeastern territory and that the advanced rates will produce no additional revenue to the southern carriers, for the reason that there is no movement to Cairo proper under the present rates. The St. Louis protestants concede that the advanced rates to Cairo are paper rates * * *.

The rates at present in effect from various groups in southeastern territory to Cairo proper are higher than those from the points in Mississippi Valley territory here under consideration. From this it would seem that the lumber produced east of the Mississippi Valley, except perhaps that which comes from the near-by Kentucky and Tennessee country which is tributary to the Cumberland and Tennessee rivers, does not compete at Cairo to any considerable extent with that produced in the Mississippi Valley. Of course, on the through movement via the various crossings to points north of the Ohio River its competition is felt, but that is another matter and one with which we are not here concerned.

The only pine-producing territory whose product competes at Cairo with lumber from the Mississippi Valley east of the river is located west of the Mississippi in Arkansas and Louisiana. From points here situated the rates on pine lumber, however, are 2 cents higher to Cairo than from the pine territory east of the river, and consequently it is not correct to say that this competition compels rates to Cairo from points in the Mississippi Valley east of the river. In 1903 a general advance of 2 cents was made in rates on lumber from points in Mississippi, Louisiana, Alabama, Georgia, Florida, Arkansas, and Texas to Cairo and the other Ohio River crossings. We had the propriety of part of these increases under consideration in *Tift v. S. Ry. Co.*, 10 I. C. C., 548, and *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C., 505, and held that from points east of the Mississippi River they were not warranted. The rates which had previously been in effect, and which are now in effect, were held to be just and reasonable for the service performed. This holding was sustained by the Supreme Court of the United States in 206 U. S., 428, 441. The increases made in the rates from points west of the Mississippi were, however, allowed to remain in effect. *Chicago Lumber & Coal Co. v. T. S. Ry. Co.*, 16 I. C. C., 323. In comparing the transportation conditions east and west of the Mississippi, on pages 328 and 329 of the last-cited opinion, we said:

Some of the transportation disadvantages on the west side of the river are the comparative sparsity of traffic due to the undeveloped condition of large districts from and through which the lumber must be transported, the inferior conditions of the roads, and the physical difficulties of operating long distances through a low, swampy territory subject to floods and frequent overflow. The track has to be laid for considerable distances on trestle, which must be provided with expensive draw spans, necessitating extraordinary outlays for maintenance. The lumber-carrying roads on the west side are less advantageously situated with respect to the ports, and consequently with respect to export and import traffic, than are those on the east side. On the west side, omitting the so-called logging roads or tap lines, the number of roads necessary for the performance of the through haul to destination and participating in the through

rate is, upon the average, greater than on the east side. It is clear that substantial dissimilarity of conditions exists in respect to the transportation of this traffic from these producing territories, respectively.

In *In the Matter of Lumber Rates*, 25 I. C. C., 50, we had under consideration carriers' requests for permission to maintain higher rates from various producing points south of the Ohio River, including Mississippi Valley territory and the points herein involved, to intermediate points than to Cairo and other Ohio River crossings. On page 59 of the opinion, after referring to the *Tift* and *Central Yellow Pine Asso. cases supra*, where increases from points east of the Mississippi were condemned, we used the following language:

In these cases the Commission held that the rates which had previously been in effect and which are now in effect were just and reasonable for the service performed * * *. Now, if these rates are *per se* just and reasonable for the greater service involved in the long haul to the Ohio River, how can it be said that higher rates to intermediate points are just and reasonable for the less service of the shorter haul, or that their maintenance should be allowed in the face of the prohibition of the fourth section?

Nor are we able to see any ground upon which the higher intermediate charge can be justified. The defendants earnestly contend that the competitive conditions at the Ohio River justify the maintenance of lower rates to that territory. Disregarding for the moment water competition, which does, in our opinion, justify the higher intermediate charge in cases where it is operative, the only competition at the Ohio River is that of markets, the desire of the various carriers to transport into that territory from the points of origin which they serve the lumber there consumed.

Without holding that competition of this sort may not be considered, for it should be, nor that instances do not exist where this sort of competition alone may justify a departure from the fourth section, nor even that in days gone by conditions at the Ohio River may not possibly have excused the lower rate, we hold upon a comprehensive view of the entire situation that to-day these conditions afford no reason for a departure from the rule of the fourth section. In so far as the Ohio River itself, by affording a means of transportation, gives to these cities upon its banks a lower rate than would otherwise be obtainable, they should be accorded the benefit of their location; but we can find in this record no reason to-day why these Ohio River communities should obtain this lumber, not tributary to the rivers of which they may claim the advantage, at a less transportation charge than the communities which lie south of them and therefore nearer the points of production. The applications of carriers for leave to continue charging the higher intermediate rates, in so far as they are based upon the competitive conditions above referred to, will be denied.

The same reasoning applies to the carriers' assertion in the present case that the rates to Cairo are compelled by competition and that on that account higher rates to Paducah are justifiable. Lumber from the Mississippi Valley east of the river does not meet such

competition at Cairo as would justify the maintenance of lower rates there than to Paducah from equidistant producing points.

The conditions and circumstances as disclosed in this case show that in order to eliminate the present undue preference in favor of Cairo and discrimination against Paducah defendants should not only be required to maintain rates to Paducah no higher than those to Cairo from substantially equidistant points or groups but even 1 cent lower. Cairo is on the north bank of the Ohio River, and it is necessary to cross the Ohio in hauling to Cairo from southern producing points. This is an additional service over and above that rendered in hauling to Paducah, which is a south-bank point.

The bridge tolls on lumber at Ohio River crossings on local and through business are as follows, in cents per 100 pounds:

Bridge tolls on lumber at Ohio River crossings.

From—	To—	Local.	Through.
Louisville, Ky.....	New Albany, Ind.....	3	1
Do.....	Jeffersonville, Ind.....	3	1
East Cairo, Ky.....	Cairo, Ill.....	3	2
Covington, Ky.....	Cincinnati, Ohio (C. & O. Ry.).....	3	(1)
Newport, Ky.....	do.....	3	(1)
Paducah, Ky.....	Brookport, Ill. (I. C. R. R. via ferry).....	3	3
Henderson, Ky.....	Evansville, Ind.....	3	1
Covington, Ky.....	Cincinnati, Ohio (L. & N. R. R.).....	3	1
Newport, Ky.....	do.....	3	1

¹ Switching rate 25 cents per 2,000 pounds; maximum \$8 per car; minimum \$6.

At present Paducah not only pays higher inbound rates than Cairo on lumber from a great many equidistant points, but also pays outbound rates to equidistant points north of the river in central freight association and trunk line territories which are universally 2 cents higher than those from Cairo. That the additional 2 cents in the northbound rates reflect the bridge toll for crossing the river at Paducah is shown by the fact that from Bridgeport, Ill., the point opposite Paducah on the north bank, the rates to central freight association and trunk line territories are the same as from Cairo, 2 cents lower than from Paducah. Carriers should either charge a bridge toll on traffic in both directions at every competitive crossing or not charge it at any crossing.

Defendants objected to the introduction of testimony bearing upon the rate adjustment outbound from Paducah and Cairo to central freight association and trunk line territories. Inbound lumber rates to the Ohio River crossings, however, can not be considered alone and without the outbound rates. As a rehandling point Paducah is at a disadvantage of 2 cents per 100 pounds on lumber coming from hardwood territory and of 4 cents on that coming from the pine territory east of the Mississippi River.

In this connection reference may be made to *Norman Lumber Co. v. L. & N. R. R. Co.*, 29 I. C. C., 565, where, among other things, we held that the rates on lumber from equidistant southeastern territory should be 1 cent less to Louisville than those contemporaneously maintained to Cincinnati, New Albany, or other north-bank Ohio River crossings. On page 573 of the opinion the following is said with regard to bridge tolls:

The testimony clearly shows that the absorption of the bridge toll * * * to north-bank crossings, while it is included in the rate from Louisville, * * * subjects Louisville to undue prejudice and disadvantage. * * * the southern carriers can not elect to absorb all or part of the bridge toll on traffic to north-bank points if to do so results to the undue prejudice and disadvantage of points on the south bank. In other words, we will not allow the bridge toll to be absorbed at one crossing if it is included in the rate at a competitive crossing.

In view of the testimony that the rates from the hardwood territory are compelled by water competition, it might at first glance seem that these should be no lower to Paducah than to Cairo. It might be argued that the rates are as much water compelled on one side of the river as on the other. When, however, we consider that the great volume of lumber which moves into Cairo and Paducah, and the other Ohio River crossings, is not locally consumed but is sent out again to points north of the river, after having been sorted, graded, or manufactured, it becomes evident that from the hardwood territory, as well as from the pine territory, the rates to Paducah should be 1 cent less from equidistant points than those contemporaneously maintained to Cairo.

From a few points on some of the small roads in the Mississippi Valley east of the river, rates to Paducah are more than 2 cents higher than to Cairo. For instance, from Gershon, Miss., on the New Orleans, Mobile & Chicago Railroad, the rates on lumber are 16 cents to Paducah and 12½ cents to Cairo; and from Houston, Miss., on the same line, the rates on staves and heading are 14 cents to Paducah and 10 cents to Cairo. Defendants attempt to justify these differences by stating that the New Orleans, Mobile & Chicago is crossed at various points along its line by the Illinois Central, Southern Railway, the Mobile & Ohio, and the Frisco, and that it must meet the competition to Cairo of the other carriers. However, the carriers whose competition in rates the New Orleans, Mobile & Chicago meets to Cairo also publish rates to Paducah which are lower than those the latter road publishes. If the New Orleans, Mobile & Chicago elects to meet the competition of other roads to Cairo, it should likewise meet their competition to Paducah.

There remain to be considered the rates to Paducah and Cairo from lumber-producing territory west of the Mississippi. From points in this territory the rates to Paducah exceed those to Cairo by a greater

29 I. C. C.

amount than from points east of the river. The following table shows rates from typical points west of the Mississippi:

Rates on pine lumber, carloads, in cents per 100 pounds.

From—	Railroad location.	To Cairo—				To Paducah—			
		Via lines west.		Via Memphis.		Via Cairo.		Via Memphis.	
		Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
Forest City, Ark.	C., R. I. & P.-St. L., I. M. & S.	214	10	214	10	256	¹ 16	216	¹ 16
Brinkley, Ark.	C., R. I. & P.-St. L. S. W.	234	11	238	11	276	¹ 17	224	¹ 16
Des Arc, Ark.	C., R. I. & P.			271	11			267	¹ 16
Little Rock, Ark.	C., R. I. & P.-St. L., I. M. & S.	280	16	302	16	322	¹ 22	298	¹ 20
Pine Bluff, Ark.	St. L. S. W.-St. L., I. M. & S.	302	16	323	² 21	344	¹ 22	319	¹ 21
Fordyce, Ark.	C., R. I. & P.-St. L. S. W.	341	16	384	16	383	¹ 22	380	¹ 20
Camden, Ark.	St. L., I. M. & S.-St. L. S. W.-M. & C.	371	16	375	² 24	413	¹ 22	371	¹ 20
Alexandria, La.	C., R. I. & P.-St. L., I. M. & S.	517	16	506	16	550	¹ 22	502	¹ 20
Monroe, La.	St. L., I. M. & S.	420	16	409	² 24	462	¹ 22	405	¹ 20
Gallion, La.	do.	385	16	371	² 24	427	¹ 22	367	¹ 20
Montrose, Ark.	do.	350	16	336	² 24	392	¹ 22	332	¹ 20
McGehee, Ark.	do.	326	16	312	² 24	368	¹ 22	308	¹ 20
Marlanna, Ark.	do.	231	10	221	² 18	278	¹ 16	217	¹ 20

¹ Combination on Cairo.

² Combination on Memphis.

The traffic from lumber-producing territory west of the river to Paducah is at present handled by the west-side lines to Cairo and by the Illinois Central beyond. It will be noted that over this route the rates to Paducah are in each instance combinations of the rate to Cairo plus the local rate of the Illinois Central of 6 cents per 100 pounds, Cairo to Paducah. Although the combinations on Memphis are almost without exception higher than those on Cairo, the mileage to Paducah via Memphis is in each case considerably less and is even less than the short-line mileage to Cairo. From this it would seem that the natural route from the points west of the Mississippi herein involved is via Memphis rather than via Cairo.

Although the complaint contains no specific prayer for the establishment of through routes and joint rates, complainants argue that only by this means can the undue discrimination against Paducah be removed. They state that since the short-line distances to Paducah are no greater than to Cairo, the maintenance of higher rates to Paducah than to Cairo is unduly discriminatory, and suggest the establishment of joint rates via Memphis to Paducah no higher than the rates maintained to Cairo.

This request is vigorously opposed by the lines west of the Mississippi, who state that by asking for joint rates complainants are raising a new issue which was not raised in the complaint. On behalf of the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern, it is argued that their main lines extend to Cairo and that under section 15 of the act they can not be deprived of their long

haul via Cairo by the establishment of joint rates via Memphis. It is stated that the rates made to Cairo by the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern are highly competitive and involve only a one-line haul and that Cairo is a basing point for rates to points in Central Freight Association territory. It is also argued that the center of lumber production west of the Mississippi has since 1909 receded over 100 miles southward, which it is stated has had the effect of lowering the average per ton-mile earnings of the carriers on lumber traffic. It is obvious, however, that while the latter argument might bear upon the reasonableness of the rates to Cairo and Paducah it has no bearing upon the question of their relative adjustment.

The only available route to Cairo and Paducah of the Chicago, Rock Island & Pacific is through Memphis. This carrier meets the competition of the west-side lines to Cairo by joint rates in connection with the Illinois Central from Memphis, but does not publish joint rates to Paducah. It is stated that the basis for rates from points on the Rock Island is the Memphis combination to all territory south of the Ohio River, except where it must meet the competition of the lines to Cairo or of lines which extend east and west across the state of Louisiana.

In making rates from points in the lumber-producing territory west of the Mississippi, herein involved, it might be proper to add to the Cairo rate the local rate of the Illinois Central of 6 cents per 100 pounds, Cairo to Paducah, if the route to Paducah via Cairo were the natural route. We can not, however, recognize it as the natural route. From the points west of the Mississippi herein involved, the short-line distances to Paducah are via Memphis and are approximately from 40 to 60 miles shorter than the distances via Cairo. Not only that, but the haul to Paducah via Cairo necessitates crossing with the Mississippi and the Ohio rivers, the former at Thebes, Ill., and the latter at Cairo, while the haul to Paducah via Memphis does not necessitate crossing the Ohio. It has been frequently maintained by the carriers that the bridge across the Ohio River at Cairo should be considered constructive mileage, and 112 miles has been given as correct equivalent. From this it is evident that the route to Paducah via Cairo is, in the language of section 15 of the act, "Unreasonably long as compared with" the direct route to Memphis. A carrier can not reserve to itself the long haul if to do so works unduly to the detriment of the shippers. In *Memphis Grain & Hay Assn. v. L. & S. F. R. R. Co.*, 24 I. C. C., 609, 615, we said:

We recognize the right of the Illinois Central so to adjust its rates as to reserve to its own line the long haul on traffic from the originating territory reached by its rails, but only so far as this may be done without trespassing on the rights of shippers.

I. C. C.

Since the complaint did not contain a specific request for the establishment of through routes and joint rates, we can not order their establishment via Memphis. However, we believe that since the short-line distances from points west of the Mississippi and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock are not greater to Paducah than to Cairo, defendants should be required to establish from points or groups substantially equidistant from Cairo and Paducah rates to Paducah over the present routing, unless they elect to do so over the more direct route via Memphis, no higher than the rates contemporaneously maintained from the same points to Cairo. The rates to Paducah from points west of the river should not be lower than those to Cairo, because in hauling from west-side points to Paducah the Mississippi must be crossed as well as in hauling to Cairo. Under these requirements the St. Louis, Iron Mountain & Southern and the St. Louis Southwestern may haul lumber originating on their lines or their connections via Cairo if they so desire. The Chicago, Rock Island & Pacific will, of course, route its traffic as at present, via Memphis.

We find that defendants unduly discriminate against the dealers and manufacturers of lumber at Paducah to the undue preference and advantage of those located at Cairo by the maintenance of the rates on lumber at present in effect from the producing points herein involved. It is our determination that the defendants who operate east of the Mississippi River should maintain rates to Paducah from substantially equidistant points or groups in Mississippi and Louisiana east of the river no higher than 1 cent below those contemporaneously maintained from the same points to Cairo. The defendants who operate west of the Mississippi River will be required to maintain rates to Paducah from substantially equidistant points or groups in Arkansas and Louisiana west of the river, on and south of the line of the Chicago, Rock Island & Pacific from Memphis to Little Rock, no higher than those contemporaneously maintained from the same points to Cairo.

Carriers will be expected by May 1, 1914, to revise their tariffs in accordance with the views expressed in this report. Pending such revision the case will be held open for such further proceedings and order as the Commission may deem necessary.

No. 5896.

PADUCAH BOARD OF TRADE

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

No. 5898.

SAME.

v.

SAME.

Submitted November 12, 1913. Decided March 3, 1914.

Complainant alleges that the rates on potatoes, cabbages, onions, beans, and canned goods from points in central freight association and western trunk line territories to Paducah, Ky., are unjust, unreasonable, and unduly discriminatory to the extent to which they exceed the rates from the same points to Cairo, Ill.; and that the rates on lumber from Paducah to points in trunk line, central freight association, and western trunk line territories as compared with those from Cairo to the same points are similarly objectionable; *Held, That—*

1. The rates on potatoes, cabbages, onions, beans, and canned goods from points in the north to Paducah should not exceed those contemporaneously maintained from the same points to Cairo by more than 1 cent per 100 pounds.
2. The rates on lumber from Paducah to the north should not exceed those maintained from Cairo to the same destinations by more than 1 cent per 100 pounds.
3. Carriers should either charge a bridge toll on traffic in both directions at every competitive crossing or not charge it at any crossing. *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583.

E. W. Hines, J. V. Norman, and W. F. Bradshaw, jr., for complainant.

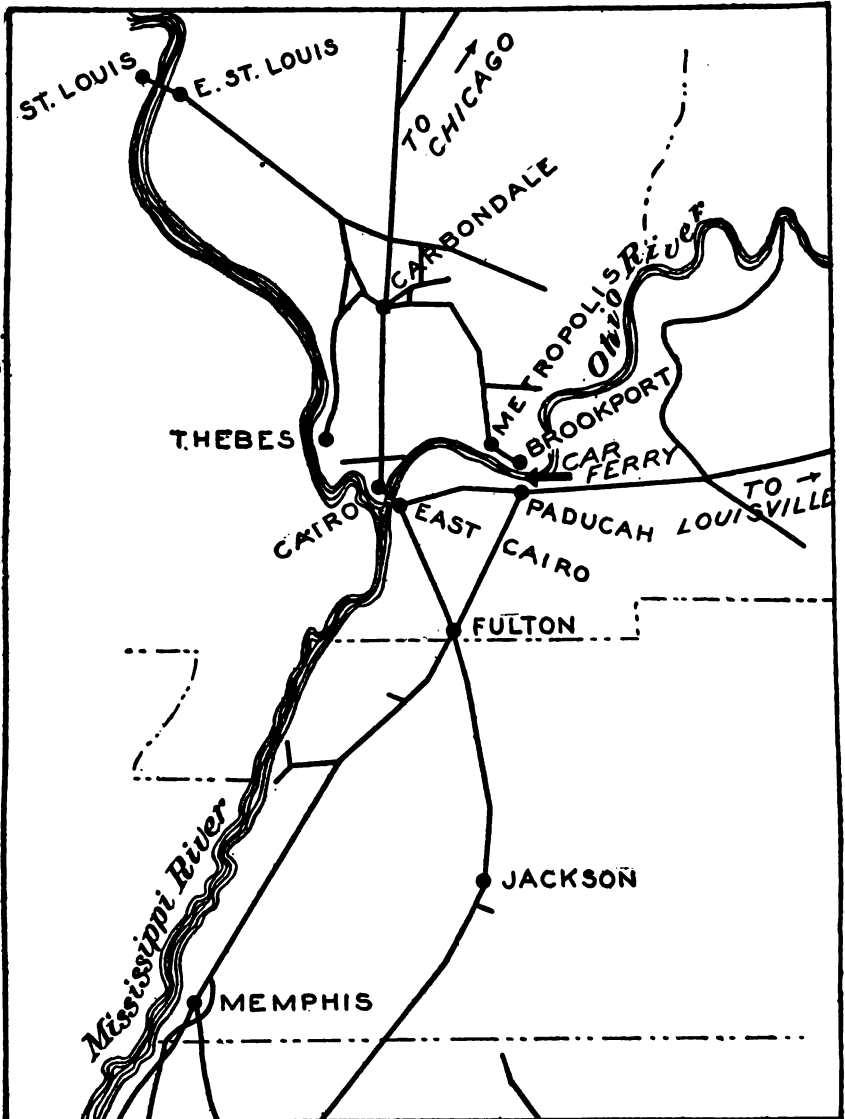
R. V. Fletcher, A. P. Humburg, R. B. Scott, W. F. Dickinson, W. T. Hughes, H. G. Herbel, and F. G. Wright for Illinois Central Railroad Company; Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The facts in these cases are interrelated. The cases were heard and argued together, and will be disposed of in one report. No. 5896 involves rates on potatoes, cabbages, onions, beans, and canned goods from points in western trunk line and central freight asso-

ciation territories to Paducah, Ky., as compared with those from the same points to Cairo, Ill. No. 5898 involves rates on lumber of all kinds from Paducah to points in western trunk line, central freight association, and trunk line territories as compared with those from



Cairo to the same points. In both cases the complaint is brought by the Paducah Board of Trade, a corporation with headquarters at Paducah, and it is alleged that the Paducah rates are unjust, unreasonable, and unduly discriminatory in so far as they exceed the Cairo rates.

Both Cairo and Paducah are Ohio River crossing points. Cairo is located on the north bank of the Ohio at its confluence with the Mississippi. Paducah is located about 40 miles east of Cairo on the south bank of the Ohio. Their relative location is shown in the map on the opposite page.

It will be observed that the Illinois Central extends north and south through both Paducah and Cairo. Cairo is upon the main line from Chicago to the south. The Ohio River is crossed at Cairo over a bridge owned by the Chicago, St. Louis & New Orleans Railroad Company, a corporation subsidiary to the Illinois Central. From Carbondale, Ill., a point on the main line north of Cairo, a branch of the Illinois Central extends to Brookport, Ill., which is on the north bank of the Ohio opposite Paducah. The crossing from Brookport to Paducah is effected by means of a car ferry operated by the Illinois Central. From Paducah another branch extends to Fulton, Ky., on the main line south of Cairo, and this branch is part of the direct line from Memphis, Tenn., to Louisville, Ky. The Illinois Central also has a line extending from East Cairo through Paducah to Louisville, as is shown in the map above. The distance from Carbondale to Cairo is 57 miles, and to Paducah 74 miles. The distance from Fulton to Cairo is 49 miles, and to Paducah 45 miles. From Paducah to Cairo via East Cairo the distance is 34 miles. With the exception of that which comes from points west of the Mississippi via Thebes, Ill., nearly all of the lumber which comes to Paducah and Cairo from the south finds its way through Fulton. Similarly much of the produce and canned goods which are distributed from Cairo and Paducah go through Fulton. From this it is evident that the distances from lumber-producing points in the south to the consuming markets north of the river, and from points of origin of produce and canned goods north of the river to points in Kentucky and Tennessee through Paducah and Cairo, are approximately the same. In hauling produce and canned goods from the north to Paducah, and lumber northward from Paducah, it is necessary to cross the Ohio River, which is not the case at Cairo. However, south of the river this situation is reversed. In hauling lumber inbound and produce and canned goods outbound it is necessary to cross the Ohio at Cairo and not at Paducah.

The rates on potatoes, cabbages, onions, beans, and canned goods from points in western trunk line and central freight association territories to Paducah, with the exception noted below and those on lumber in the opposite direction, are 2 cents per 100 pounds higher than the Cairo rates. The rates on produce and canned goods are the same to Paducah as to Cairo from points in trunk line territory and from the eastern half of Ohio in central freight association terri-

tory, but the rates on lumber from Paducah to those points are 2 cents higher than from Cairo. The defendants deny that the 2-cent differential in favor of Cairo, in rates on produce and canned goods inbound and on lumber outbound, is unreasonable, or that it gives Cairo an undue preference over Paducah.

The testimony shows that there are jobbers and wholesalers of produce and canned goods located at Paducah who are in active competition with others located at Cairo. Potatoes, cabbages, onions, beans, and canned goods are shipped to Cairo and Paducah from points in Wisconsin, Michigan, Indiana, and Illinois and shipped out again principally to points in Kentucky and Tennessee. It was estimated that Paducah receives about 500 cars of potatoes, cabbages, and onions annually from the territory described in the complaint. There are also several manufacturers of wood articles located at Paducah. Lumber is produced in great quantities in the territory south of the Ohio River. At nearly all of the Ohio River crossings rehandling yards are located where the lumber which comes from the smaller mills in the south is classified as to the different kinds, grades, and sizes and is then shipped on to points in central freight association, trunk line, and western trunk line territories. Several witnesses testified that although they live at Paducah and would prefer to establish yards there, they are maintaining rehandling yards at Cairo, Metropolis, and Brookport, Ill., because of the more favorable rate situation at the latter points.

Considered by themselves it might appear that the present Paducah rates, inbound on produce and canned goods and outbound on lumber, are correctly adjusted with respect to the Cairo rates from and to the same points, for although the Paducah distances are approximately the same as those to and from Cairo there is the additional service of crossing the Ohio River at Paducah to be considered. We have recently had before us two other cases involving rates to and from Ohio River crossings, in which the propriety of charging an arbitrary for crossing the river above what would otherwise be a reasonable rate was considered. In *Norman Lumber Co. v. L. & N. R. R. Co.*, 29 I. C. C., 565, the complaint among other things deals with the propriety of charging a bridge toll in the outbound rates from Louisville to points north of the Ohio. In that connection we held that the question of the absorption of bridge tolls is largely one of policy with the carrier, which may absorb or not so long as the alternative adopted does not place an undue burden upon a shipper or locality. We decided that in so far as competition with Cincinnati is concerned the maintenance of rates on lumber from Louisville to central freight association territory which reflect the bridge toll for crossing the Ohio River, and which in consequence thereof are

1 cent higher than the rates from Cincinnati to equidistant points, does not constitute an undue discrimination against Louisville. *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583, is a companion case to that under consideration at present, and involves lumber rates from the south to Paducah as compared with those to Cairo. On page 588 of the opinion we said:

Cairo is on the north bank of the Ohio River, and it is necessary to cross the Ohio in hauling to Cairo from southern producing points. This is an additional service over and above that rendered in hauling to Paducah, which is a south-bank point.

* * * * *

Carriers should either charge a bridge toll on traffic in both directions at every competitive crossing or not charge it at any crossing.

And on page 592:

It is our determination that the defendants who operate east of the Mississippi River should maintain rates to Paducah from substantially equidistant points or groups in Mississippi and Louisiana east of the river no higher than 1 cent below those contemporaneously maintained from the same points to Cairo.

In view of these decisions and the testimony in the present cases, we do not believe that complainant's request for rates on produce and canned goods from the north to Paducah and on lumber from Paducah to the north no higher than the Cairo rates to and from the north respectively should be granted.

A charge may properly be made for the additional service of crossing the Ohio River in hauling lumber from and produce to Paducah. However, this does not sanction the present charge as just, reasonable, and nondiscriminatory.

In connection with complainant's statement that the Paducah rates are unjust, unreasonable, and discriminatory to the undue preference and advantage of Cairo, it is alleged in the petitions in these cases that Paducah is given no advantage in the rates to and from points south of the Ohio corresponding to Cairo's advantage in rates to and from points north of the river. These allegations are substantiated by the facts as disclosed in the testimony. The rates on produce and canned goods from Cairo to equidistant points in Kentucky and Tennessee are uniformly the same as the rates from Paducah to the same points, although the haul from Cairo involves the additional service of crossing the Ohio River. Lumber-producing points throughout the Mississippi valley, east and west of the river, are practically equidistant from Cairo and Paducah. Nevertheless, the rates on lumber from the northern half of the Mississippi valley east of the river are the same to Cairo as to Paducah, and from the southern half are almost universally 2 cents higher to Paducah than to Cairo. From lumber-producing points west of the Mississippi the rates to Paducah exceed those to Cairo by still greater amounts.

Defendants argue that the service of transporting produce and canned goods from points in the north to points in the south, and lumber in the reverse direction, is essentially different through Paducah than through Cairo. It is stated that Cairo is on the main line of the Illinois Central, upon which the bulk of the north-and-south traffic moves, while Paducah is reached from Carbondale by a branch line, and from Fulton by a segment of the Illinois Central's direct line from Memphis to Louisville, upon which the traffic is predominately east and west rather than north and south. Defendants state further that although the Ohio must be crossed in the movement of canned goods outbound from Cairo and of lumber inbound, the crossing at Cairo is by bridge, while at Paducah it is by car ferry, an essentially different service. The transportation across the Cairo bridge is one continuous movement, while at Paducah a car must be switched to the car ferry and later taken from the ferry and placed in a train. It is stated that the car-ferry service is so unsatisfactory to the Illinois Central that it prefers to use the longer route from Paducah via East Cairo and the Cairo bridge, and the testimony shows that a great deal of Paducah traffic moves in this manner, apparently for the carrier's convenience. Defendants also submitted certain rate comparisons to show that the present rates to and from Paducah are reasonable.

However, the 2-cent differential in the Paducah rates over the Cairo rates can not be accounted for by the fact that Cairo is on the main line of the Illinois Central while Paducah is not, and that the volume of traffic through Cairo is considerably greater than through Paducah. That this is not the basis for the difference becomes apparent in examining the rates on produce and canned goods to Brookport and on lumber from Brookport. These rates are the same to and from points in the north as the Cairo rates, although Brookport is located on the branch from Carbondale to Paducah. From this it appears that the only possible justification of the 2-cent differential, Paducah over Cairo, must be found in the additional service of crossing the river at Paducah.

Our decision in the inbound lumber case, *Paducah Board of Trade v. I. C. R. R. Co.*, *supra*, requires carriers to establish rates on lumber from points in Mississippi valley territory 1 cent lower to Paducah than to Cairo. From the testimony in the present case it would appear that a like differential, Paducah over Cairo, in their outbound rates to the north on lumber and in their inbound rates from the north on produce and canned goods would be proper.

Defendants stated that the cost of the Cairo bridge and approaches was about \$3,500,000. The original cost of the Paducah car ferry was given as \$60,000, and of repairs and improvements from 1897 to 1910,

inclusive, \$88,155. The cost of maintaining and operating the car ferry during the month of August, 1913, was given as follows:

Operating floating equipment-----	\$2,573.68
Floating equipment repairs-----	2,098.80
Docks and wharves-----	681.42
Total-----	5,353.90

Attention should be called to the large sum paid for repairs during this month. The average monthly cost for repairs during the period 1897 to 1910, inclusive, was \$565.10, and from this it would seem that the expenditure for repairs during August, 1913, was extraordinary. However, the operation of the ferry appears to have been a profitable enterprise. The Chicago, Burlington & Quincy enters Paducah from the north via the Illinois Central car ferry. Under its contract with the Illinois Central it must pay a minimum monthly charge of \$6,250. It appears that during August, 1913, 1,085 loaded and 218 empty Chicago, Burlington & Quincy cars were transported across the river by the Illinois Central car ferry, as against 314 loaded and 103 empty Illinois Central freight cars. It is possible that the reason for hauling freight to and from Paducah via Cairo is that the capacity of the car ferry is completely taxed in taking care of the apparently profitable Chicago, Burlington & Quincy traffic.

In view of all the facts and circumstances as disclosed by the testimony, we find that the rates on potatoes, cabbages, onions, beans, and canned goods from points in central freight association and western trunk line territories to Paducah, and the rates on lumber from Paducah to points in central freight association, trunk line, and western trunk line territories are unjust, unreasonable, and unduly discriminatory as compared with the Cairo rates from and to the same point. It is our determination that the rates on potatoes, cabbages, onions, beans, and canned goods from central freight association and western trunk line territories to Paducah should not exceed those contemporaneously maintained to Cairo by more than 1 cent per 100 pounds, and that the rates on lumber from Paducah to points in central freight association, western trunk line, and trunk line territories should not exceed those contemporaneously maintained from Cairo to the same points by more than 1 cent per 100 pounds.

Carriers will be expected by May 1, 1914, to revise their tariffs in accordance with the views expressed in this report. Pending such revision the case will be held open for such further proceedings and order as the Commission may deem necessary.

No. 4810.
SPRINGFIELD TRAFFIC BUREAU OF THE JOBBERS &
MANUFACTURERS ASSOCIATION

v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

FOURTH SECTION APPLICATIONS Nos. 1840, 1862, AND 1898.

Submitted October 5, 1912. Decided March 3, 1914.

1. On allegation that local class rates from St. Louis, Mo., to Springfield, Mo., applicable as proportions of through rates on traffic originating east of the Indiana-Illinois state line, in central freight association, southeastern, and Carolina territories, are unreasonable and unjustly discriminatory as compared with class rates from St. Louis, Mo., to Kansas City, Mo., applicable as proportions of through rates from the same originating territories; *Held*, That the rates are not unreasonable or unjustly discriminatory.
2. Parts of Fourth Section Applications Nos. 1840, 1862, and 1898, asking for permission to continue to charge proportional class rates from St. Louis, Mo. to Kansas City, Mo., via the line of the St. Louis & San Francisco Railroad Company on traffic originating east of the Indiana-Illinois state line, in central freight association, southeastern, and Carolina territories, which are lower than rates concurrently in effect on like traffic from St. Louis, Mo., to Springfield, Mo., granted.

S. C. Bates for complainant.

Fred H. Wood and *Edward A. Haid* for St. Louis & San Francisco Railroad Company.

H. G. Herbel and *F. G. Wright* for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

CLARK, Chairman:

Local class rates from St. Louis, Mo., to Springfield, Mo., which are applicable as proportions of through rates on traffic originating east of the Indiana-Illinois state line, in central freight association, southeastern, and Carolina territories, which are in cents per 100 pounds as follows:

Class----	1	2	3	4	5	A	B	C	D	E
Rate ----	62	52	40	32	25	28	23½	17	15	13

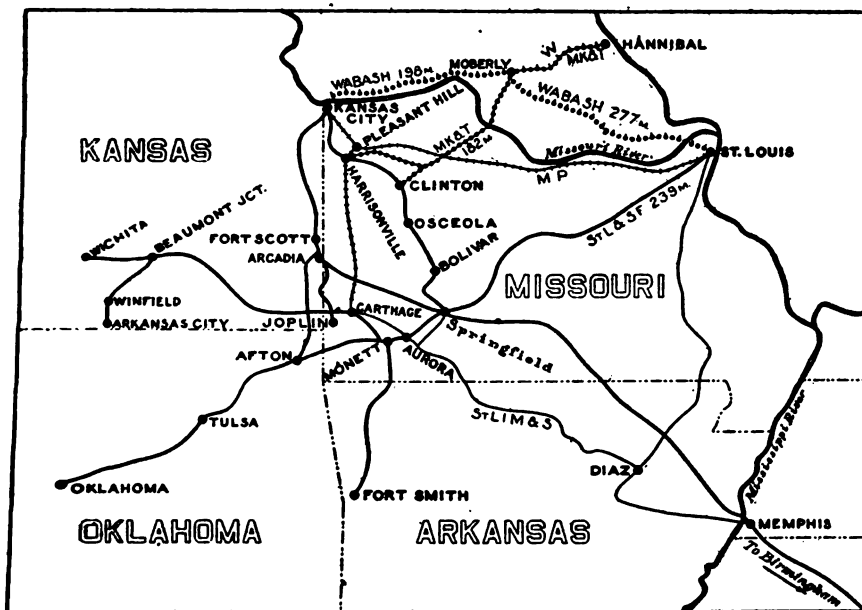
are alleged to be unreasonable and unjustly discriminatory to the extent that they exceed the class rates applicable from St. Louis to Kansas City, Mo., as proportions of through rates on traffic originating in the same territories. These rates, in cents per 100 pounds, are as follows:

Class----	1	2	3	4	5	A	B	C	D	E
Rate-----	55	41	32	24	20	22	18	15	12	10

The rates on the numbered classes were prescribed by the Commission in the *Warnock case*, 21 I. C. C., 546. The rates on the lettered classes are on the basis of the previous relationship which existed between them and the numbered classes, as suggested by us in that case.

Complainant prays that the 55-cent scale be established to Springfield from St. Louis on business originating in the territories mentioned, and that reparation be awarded on all shipments to Springfield from such territories moving subsequent to December 30, 1911, when the 55-cent scale became effective.

The following map is inserted in order that the situation with respect to surrounding points may be clearly understood:



Springfield, Mo., is located on the main line of the St. Louis and San Francisco Railroad, hereinafter styled the Frisco, 239 miles southwest of St. Louis, 201 miles southeast of Kansas City, and on a branch of the St. Louis, Iron Mountain & Southern Railway, hereinafter styled the Iron Mountain, via which line the distance from St. Louis to Springfield is 29 I. C. C.

Louis is 449 miles. It is intermediate via the Frisco between St. Louis and Oklahoma points and via the Frisco between Birmingham and Kansas City. The Frisco has two lines converging from Springfield to Kansas City. About 12 years ago the line through Clinton and Harrisonville, Mo., to Kansas City, which is known as the high line, was built. Later the Frisco purchased the Kansas City, Fort Scott & Memphis Railroad, which owned a line running from Birmingham, through Memphis, Tenn., Springfield, Mo., and Fort Scott, Kans., to Kansas City.

In fixing mileage scales of class rates for Missouri the railroad and warehouse commission of Missouri divided the state into two territories, to which it applied, respectively, rate schedules A and B. The first comprises that part of the state lying on and north of the main line of the Missouri Pacific Railway between St. Louis and Kansas City, and the second that part lying south of the above line. For a distance of 239 miles the rates in these two territories are as follows:

Class----	1	2	3	4	5	A	B	C	D	E
A-----	61½	47½	36½	27½	22½	26	20	18	14½	11½
B-----	67	57	46	40	33	37	30	23½	18	13½

The Missouri, Kansas & Texas Railway has a line from Hannibal, Mo., to Clinton and Harrisonville which is but 182 miles in length and which lies mainly in the lower-rated schedule A territory. It established the rates now applicable to Springfield for that distance and the Frisco met them at Clinton and Harrisonville, which, in compliance with the law of Missouri, necessitated holding the rates so established as maxima at Springfield. Therefore, Springfield's basis of class rates is lower than was prescribed by the railroad and warehouse commission of Missouri to a greater extent than the *Warnock case* scale is lower than the 60-cent scale.

On business moving ocean and rail from the Atlantic Seaboard to Springfield, the Missouri River scale as established in the *Warnock case, supra*, applies from the Mississippi River west. This traffic is carried via the line shown on the map from Birmingham, through Memphis, Springfield, and Fort Scott, to Kansas City. Complainant lays stress upon the fact that it is, so far as ocean-and-rail business from Atlantic Seaboard territory is concerned, named as a Missouri River common point and considers that fact to be a substantial reason for according it the interrivers scale on all-rail business from the territories named. The Frisco has not established the interrivers scale from these territories to Springfield except on ocean-and-rail business.

The distance from Birmingham, through Memphis, to Kansas City is 735 miles and the Frisco receives, in addition to the proportion of the rate applying west of the Mississippi River, a substan-

tial portion of the rate up to the Mississippi River. The inter-river scale on ocean-and-rail business is also applicable via St. Louis, but practically none of that tonnage moves through that crossing.

While the Frisco, in order to keep its line open for all classes of business between the rivers, has met the rates of the direct lines to Kansas City, it is not an active competitor for St. Louis-Kansas City local business or all-rail business from middle west and eastern territory, and its interest in Missouri River business from the east is primarily in the ocean-and-rail business through Birmingham. During the months of February and August, 1910, the total movement of all-rail traffic via the Frisco from central freight association territory to Kansas City was 59,700 pounds of class traffic and 25 cars of miscellaneous articles taking commodity rates, while during the same months it moved through Birmingham and Memphis to Kansas City, from seaboard territory, 793,000 pounds of class traffic and 490,000 pounds of traffic taking commodity rates.

The White River division of the Iron Mountain, between Carthage, Mo., and Batesville, Ark., was constructed during the years 1903 to 1906. A branch line from Crane north to Springfield, about 34 miles in length, was opened for business April 20, 1907. Although the Iron Mountain traverses a higher-rated territory than does the Frisco, and Springfield is 449 miles distant from St. Louis via its road, on entering Springfield it met the rates of the Frisco. It also reaches Springfield from St. Louis via Diaz, Ark., and Crane, Mo., over which route the distance is 512 miles.

In June, 1912, the Iron Mountain handled 65,500 pounds of less-than-carload freight from Atlantic seaboard territory to Springfield, while from central freight association territory during the same month it carried 118,000 pounds of less-than-carload shipments. The carload business for the same month from the same territory was 397,000 pounds. Apparently, therefore, a reduction in the scale via this road would affect a greater tonnage from central freight association territory than from seaboard territory.

Springfield is a city of 43,000 inhabitants. From letters on file in this case it appears to have been customary and the intention of the Frisco to accord Springfield the same commodity rates from central freight association and other eastern territory as obtain to Kansas City. Commodity rates in and out of Springfield are not in issue, and complainant admits that the bulk of Springfield traffic moves in on such commodity rates. It is asserted, however, that the class rates under the 55-cent scale are lower than the commodity rates now in effect and that if Springfield is accorded the 55-cent scale there will be no further necessity for commodity rates.

In distributing merchandise, Kansas City and Springfield reach a considerable portion of the same territory at the same rates. In some

instances rates from Kansas City are lower than from Springfield for similar distances, but inasmuch as such outbound rates are not here under attack, it is not necessary to outline the territory in which Springfield alleges that it is at a disadvantage as compared with Kansas City. It would be difficult so to do because of the tonnage received at Springfield on commodity and ocean-and-rail rates. The gist of the complaint is that under the interriver scale Kansas City receives its goods at a less freight cost than does Springfield, and is therefore enabled to ship through and beyond Springfield, while on account of such difference in rates Springfield can not ship half way to Kansas City.

Complainant contends that as the distance from St. Louis to Springfield is less than the average short-line distance from St. Louis to Kansas City, and as traffic from St. Louis to Kansas City moves through Springfield on the 55-cent scale, the reasonableness of the 55-cent scale has already been determined in *Burnham, Hanna, Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, and the *Warnock case, supra*, and therefore testimony as to the unreasonableness of the 62-cent scale is unnecessary. It insists that as ocean-and-rail shipments originating in Atlantic seaboard territory may move from St. Louis to Springfield in the same car or the same train as all-rail traffic from the territories mentioned, the service which the Frisco performs under the 62-cent scale is identical with that which it affords under the 55-cent scale.

The allegation of unjust discrimination is based solely on the lower scale of rates to Kansas City than to Springfield. Necessarily this involves not alone the question of whether the circumstances and conditions at Kansas City are dissimilar to those which obtain at Springfield, but also whether or not the fourth section of the act may properly be disregarded. The latter question is presented in the Frisco's general applications for relief Nos. 1840, 1862, and 1898.

To the north of Springfield lie Bolivar, Osceola, Clinton, and Harrisonville, the rates to which from St. Louis are on the same basis as Springfield. To Aurora and Monett the rates are:

Class----	1	2	3	4	5	A	B	C	D	E
Rate-----	72	62	50	35	28	33	25	20	15	13

To Joplin and Carthage they are:

Class----	1	2	3	4	5	A	B	C	D	E
Rate-----	74	64	50	40	28	33	27½	21½	17	15

Carthage, which is 75 miles west of Springfield, is, therefore, on first-class traffic, 12 cents over Springfield, and if Springfield were given the interriver scale, the disadvantage would be increased to 19 cents. In *Leggett & Platt Spring Bed & Mfg. Co. v. M. P. Ry. Co.*, 22 I. C. C., 513, wherein the rates on spring wire from Chicago territory to Carthage were attacked as being unreasonable and discriminatory

as compared with the rates to Kansas City and Springfield, we held that a rate on wire from Waukegan, Mich., to Carthage, more than 8 cents in excess of the rate to Springfield, was unjustly discriminatory.

The carriers assert that if the rates to western Missouri were reduced, rates on the Frisco to points in Kansas as far west as Winfield would necessarily be correspondingly decreased. The Missouri Pacific has a direct line west of Carthage into Kansas, and a reduction to Springfield and Carthage would reduce rates to points in Kansas 147 miles north, 167 miles west, and 243 miles southwest of Fort Scott.

The first-class rates from Memphis for distances ranging from 225 to 244 miles are from 74 cents to \$1. The first-class rates from Kansas City for similar distances are higher than the local rates from St. Louis to Springfield.

Defendants submit that as the 55-cent scale applies to Kansas City and the 62-cent scale to Springfield, mathematically the Kansas City merchant has on first-class freight an advantage of 7 cents, but this difference does not afford a predicate that Springfield is subjected to unjust discrimination. They contend that Springfield must prove that the 62-cent scale is in and of itself unreasonable in order to obtain relief, if it be shown that the circumstances and conditions surrounding the transportation to Kansas City are substantially dissimilar to those obtaining at Springfield. The short-line distance from Hannibal to Kansas City is 198 miles; from St. Louis, 277 miles. In the *Burnham, Hanna, Munger case, supra*, we found that the average short-line distance from all Mississippi River crossings to Kansas City is 275 miles. Via the Frisco the distance from St. Louis to Kansas City is 440 miles. If the Frisco is to participate at all in Kansas City business it must continue to meet the short-line rates. Traffic between the rivers by the direct lines is of immense volume and is denser by far than that from St. Louis to the southwest. The grades between the rivers are lower than those over the Ozarks; operating conditions are more favorable in the northern than in the southern part of Missouri; the carriers operating directly between the rivers in the northern half of the state have lower unit costs and stronger financial conditions than do the southwestern lines. These facts seem to have been recognized by the railroad and warehouse commission of Missouri in establishing a lower scale of rates for the roads in the northern half of the state than for those in the southern half.

Springfield is in competition with Louisville, Ky., St. Louis, Missouri River cities, and such near-by towns as Carthage and Joplin, Mo., and Fort Scott, Kans. Springfield has considerable advantage over Kansas City in eastern Oklahoma, western Arkansas, and south-central Missouri, and as a practical matter, in view of its now being accorded the 55-cent scale on ocean-and-rail business and com-

modity rates on a parity with Kansas City, its real competition is with St. Louis. In *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.*, 29 I. C. C., 629, class and commodity rates maintained by the Frisco from St. Louis and East St. Louis were found to be neither unreasonable nor unduly prejudicial to Fort Scott, Kans., as compared with similar rates to Kansas City, and we granted the Frisco permission to continue lower rates from St. Louis and East St. Louis to Kansas City than to Fort Scott. In so far as it is applicable that finding is controlling here.

Disregarding the benefits which have already been accorded to Springfield under commodity and ocean-and-rail rates and the fact that the rates which are assailed are lower than otherwise would have been given it but for the force of the competition of the Missouri, Kansas & Texas Railway, complainant's contention in the instant case presents practically but one consideration—that the distance from St. Louis to Springfield via the Frisco is shorter than the average short-line distance between the rivers. The Commission's opinions in the *Burnham*, *Hanna*, *Munger*, and *Warnock* cases were based upon the controlling circumstances and conditions disclosed in those records. The Frisco was not a defendant in the *Burnham*, *Hanna*, *Munger* case, and our finding that the rates were too high had reference to the transportation via the direct lines between the rivers. If the rates fixed by the Commission on the highly competitive traffic between the rivers were held to be the measure of all rates for equal distances from St. Louis, the present fabric of local and proportional rates therefrom would be disrupted beyond recognition. They are so well known that it is only necessary to refer to the controlling force of competitive conditions between the rivers and at Kansas City. They are substantially dissimilar from those obtaining at Springfield. In the circumstances we can not find the challenged rates to be either unreasonable or unjustly discriminatory.

Such parts of the fourth section applications hereinbefore mentioned as are applicable in this connection will be granted upon the condition that the present rates to Springfield shall not be exceeded and the complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 335.
MARBLE RATES FROM VERMONT POINTS.

Submitted January 31, 1914. Decided March 3, 1914.

1. Suspended tariff cancels joint rate on marble from Rutland Railroad stations to New York, routed White Creek, N. Y., Troy, N. Y., via Boston & Maine and New York City via Murray's Line. The respondent Rutland Railroad Company has in effect a joint rate from stations on its line to New York City via Chatham and New York Central & Hudson River Railroad. This latter route gives this respondent approximately 59 miles additional haul with a through route as direct as route under the canceled tariff, and rate is the same for either route.
2. If a railroad has traffic in its possession, it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby. *Waverly Oil Works v. P. R. R. Co.*, 28 I. C. C., 621.
3. Respondent Rutland Railroad Company is well within its rights in canceling the joint rate over the route by which it receives the shorter haul.

E. W. Lawrence for respondent Rutland Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The tariff here under suspension is designated as Rutland Railroad Company supplement No. 5 to I. C. C. No. 2839, filed to become effective November 7, 1913, and suspended until September 7, 1914. It cancels joint rates on marble moving via Boston & Maine Railroad and Murray's Line from marble shipping stations on the Rutland Railroad to New York City. Protests were filed by Murray's Line and several marble contractors located in New York City.

It appears that under the joint rate which it is sought to cancel marble moves from points of origin via the Rutland Railroad to White Creek, N. Y., where it is delivered to the Boston & Maine Railroad, which carries the traffic for a distance of approximately 30 miles to Troy, N. Y., it being there turned over to Murray's Line for delivery to New York City via the Hudson River.

The Rutland Railroad extends to Chatham, N. Y., a point about 59 miles nearer New York than White Creek. At Chatham it connects with the New York Central & Hudson River Railroad with a direct line to New York City, and this respondent publishes a joint rate via this route which is identical with the rate which it is sought to cancel. By routing shipments via Chatham and the New York Central the Rutland Railroad gets a longer haul by about 59 miles, and this fact is advanced by this respondent as its justification for

canceling the joint rate made via the Boston & Maine and Murray's Line.

The following table shows the divisions of the through rate via these two routes, carload rates in cents per 100 pounds:

Via Chatham and N. Y. Central. ¹	Per cent.	2-cent terminal.	3-cent terminal.	4-cent terminal.	Via Murray's Line. ²	Per cent.	Pier.	Light.
Rutland R. R. Co.	58.1	6.97	6.39	5.81	Rutland R. R. Co.....	49.73	5.47	5.47
N. Y. C. & H. R. R. Co.	41.9	5.03	4.61	4.19	B. & M. R. R.	8.37	1.25	1.25
Terminal.....		2	3	4	Murray's Line.....	41.90	4.28	4.28
					Terminal.....		3	3
Total through rate.....		14	14	14	Total through rate.....		14	14

¹ Includes lighterage within free lighterage limits in New York Harbor.

² Division to Murray's Line on traffic originated on Delaware & Hudson line claimed to be 5.2 cents.

³ Boston & Maine minimum of 1½ cents per 100 pounds. Murray's Line stands shrinkage.

It appears that the service to the consignee is identical under both rates, and that the rate is the same except as to slabs 4 inches thick, moving via New York Central & Hudson River route. This, however, does not appear to be a material difference, and if it should develop that it is an unreasonable exception, it can be treated later upon complaint to which the terminal road, New York Central & Hudson River Railroad Company, is a party.

The Commission's power under the act to establish through routes and joint rates is limited to this extent, that it may not require a carrier, without its consent to embrace in such through route substantially less than the entire length of its railroad which lies between the termini of such proposed through route unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established, and in *Waverly Oil Works v. P. R. R. Co.*, 28 I. C. C., 621, 630, the Commission said, "If a railroad has traffic in its possession, it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby."

It appears that the route via Chatham and the New York Central & Hudson River Railroad to New York City is practically the same distance as the route under the tariff which it is sought to cancel. It further appears that the route via Murray's Line is not available during certain periods of the year because of the suspension of transportation on the Hudson River during the winter months.

It does not appear that the public interest is in any wise jeopardized by the abandonment of the route carried in the tariff which it is sought to cancel and from a consideration of the circumstances in the record before us it is our conclusion that the respondent Rutland Railroad Company is well within its rights in providing a joint rate and a through route by which it will receive this longer haul. An order will be entered vacating the suspension herein.

INVESTIGATION AND SUSPENSION DOCKET No. 202.
LUMBER RATES FROM OREGON AND WASHINGTON TO
EASTERN POINTS.

Submitted October 11, 1913. Decided February 9, 1914.

1. The proposed closing of the Wallula gateway to shipments of wool from local points on the lines of the Oregon-Washington Railroad & Navigation Company to the east over the Northern Pacific found upon the facts of record not to involve any unreasonable consequences, and the order of suspension is therefore vacated.
2. The closing of the Spokane, Silver Bow, and Butte gateways to shipments of lumber originating on other lines and destined to points of consumption on the lines of the Union Pacific system not sustained by the facts shown of record, and the order of suspension is therefore made permanent.
3. The cancellation of through routes and joint rates by way of the Colorado gateways upon general traffic between points on the lines of the Oregon-Washington Railroad & Navigation Company and the Missouri River and points east thereof held not to have been justified of record, and the order of suspension is therefore made permanent.
4. The traffic and tariff arrangements of the Chicago, Milwaukee & St. Paul and the Great Northern with certain Puget Sound boatlines serving particular mills criticized and condemned.

H. A. Scandrett for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon-Washington Railroad & Navigation Company.

F. G. Dorety for Great Northern Railway Company.

F. D. Burroughs for Chicago, Milwaukee & St. Paul Railway Company.

Clyde B. Aitchison for Railroad Commission of Oregon.

Stephen V. Carey for Public Service Commission of Washington.

G. N. Skinner for Puget Sound Naval Station Route.

Joseph N. Teal, William C. McCulloch, E. M. Fronk, A. F. Mills, C. E. Hill, and C. A. Johnson for various lumber companies.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In this proceeding an attempt is being made, by certain carriers serving the northwest and particularly the states of Oregon and Washington, to close established routes for certain traffic. The proposed cancellations fall into four groups, and the carriers justify their course upon different grounds in each case. The first three gateways

are to be closed, at the instance of the lines composing the Union Pacific system, in order, as it is stated, to conserve their revenues. The protestants, among whom are numbered the public utilities commissions of the states of Oregon and Washington and the largest lumber producers' association along the northwest coast, insist that this action is a part of a general plan of the Union Pacific lines to limit markets and distribution; to create a monopoly of traffic; and to destroy the right of shippers to control the routing of their freight as provided in the amended act. The carriers deny that there is any general plan with such purposes in view, and they insist that the proposed cancellation of routes is justified in each instance by the facts applicable to the particular situation. The existing conditions will appear in the discussion of each gateway.

THE WALLULA GATEWAY.

It is proposed to close this route to wool traffic passing from local points on the line of the Oregon-Washington Railroad & Navigation Company to the east over the Northern Pacific. Only 12 cars of wool have passed through this gateway during the last fiscal year, and for four previous years there is no record of any movement. If this route is closed three other routes to the Missouri River will still remain open; one by way of the Union Pacific system lines, another in connection with the Great Northern, and a third in connection with the Chicago, Milwaukee & St. Paul. In moving the traffic by way of Wallula and the Northern Pacific from Arlington, in the state of Oregon, said to be a typical point of origin, the Oregon-Washington has only a 72-mile haul, whereas the originating line has a movement of 280 miles to the junction with the Great Northern at Spokane, and 247 miles to its connection with the Milwaukee at Plummer, in the state of Idaho. The movement in the greatest volume is over the Union Pacific system rails to the Missouri River, in which case those lines get their longest haul. The distance to Chicago from Arlington over the routes here reviewed is as follows:

	Miles.
Oregon-Washington, Northern Pacific and Burlington.....	2, 176
Oregon-Washington, Great Northern and Burlington.....	2, 186
Oregon-Washington, Oregon Short Line, Union Pacific and Northwestern.....	2, 149
Oregon-Washington and Chicago, Milwaukee & St. Paul.....	2, 092

The protestants are principally concerned with what they think is a general plan of limiting the shippers' right to route their traffic; but they also contend that the cancellation of the Wallula gateway would curtail the available routes through the great lakes in connection with lake lines. The same rate however applies by the boat lines as by all-rail routes to the east, and the same rate applies to Duluth as to all points east of Duluth. There is little force therefore

in that contention. It was also pointed out by the protestants that the sheep from which the wool is gathered along the lines of the Oregon-Washington Railroad & Navigation Company are grazed in part on lands belonging to the Northern Pacific, and the grazing rights are leased from the latter line under an agreement which requires that the products of the flocks so grazed shall be routed over the Northern Pacific lines provided the same rates apply over that route as over other routes. But the Northern Pacific is not before us in this proceeding and has entered no protest against the closing of the Wallula gateway to the wool traffic.

As is recited in *Rates on Wool*, 23 I. C. C., 151; 25 I. C. C., 185; 25 I. C. C., 675, the rates on wool were formerly made on the coast combination, using the third-class rate from the point of origin to the coast plus the terminal rate of \$1, which is blanketed as to destinations from Colorado to the Atlantic seaboard. The tariffs filed as a result of our report in that case carried the same basis for constructing the through rate except that the fourth-class rate to the coast was used as a factor instead of the third. The \$1 terminal rate was used as the other factor because the combination made in this way results in lower rates than the mileage scale which we fixed. The cancellation of this through charge will involve the application of the local rates to and from Wallula in order to move the traffic east of that point over the Northern Pacific. When the tariffs were filed, to meet the views of the Commission in *Rates on Wool, supra*, the cancellation of the Northern Pacific routing through Wallula was carried in the same tariff with the reduction in the through rates, and, therefore, when we suspended the application of this tariff there was left in effect the through route with the joint rate based on the third-class combination carried in the older tariff. Consequently, although the cancellation of the routing is suspended in this proceeding, no traffic is moving because of the older and higher rates. It was suggested that there might be a curtailment of the car supply if this route were canceled, but the witness did not recall that a shortage of cars at his shipping point had ever been relieved by cars from the Northern Pacific, and, in fact, the testimony showed that there had seldom been any delay of wool shipments by reason of the failure of the Oregon-Washington to furnish equipment.

The issues here presented are substantially similar to those involved in *Rates on Cotton Seed and its Products*, 28 I. C. C., 219. In that case we considered whether a line originating freight and being in a position to transport it to destination over its own rails and by the shortest route could be compelled to maintain a through route with another carrier or could insist upon conserving to itself the long haul. We there found that if we had been asked as an original

proposition to establish a through route and joint rate by the longer route, we would have found it to be an unnatural one and would have held under the statute that we had no right to deprive the originating line of its long haul.

Under all the circumstances disclosed of record with respect to the proposed cancellation of this gateway we find that the respondents have justified that course and our order suspending the effectiveness of the closing of that route will therefore be vacated.

SILVER BOW, SPOKANE AND BUTTE GATEWAYS.

The second group of cancellations suspended in this proceeding are those involving eastbound rates on lumber and forest products from originating mill points on other lines through the Spokane, Silver Bow, and Butte gateways to consuming points along the line of the Union Pacific system. The carriers did not understand that our order of suspension applied to the cancellation of routing by the Butte gateway and that route from mill points on the Milwaukee was closed for a time, but when they realized that the cancellation was suspended in our eighth supplemental order it was reopened. The cancellation of all of these routes will involve the application of the combination of local rates through the gateways and will result in an increase in rates amounting to from 4 cents to 15 cents per 100 pounds. It is admitted by the carriers that the application of the combination of locals will exclude lumber originating on other lines from local markets on the Union Pacific system. The rates through the Spokane gateway apply from substantially all territory served by the Great Northern Railway and some connecting lines west of and including Bonners Ferry, in the state of Idaho, except points south of Tacoma, to substantially all territory tributary to the Union Pacific system lines from Pocatello to the Missouri River. The rates through the Silver Bow gateway apply from substantially all territory tributary to the Northern Pacific Railway west of that point, also from all points on the Spokane, Portland & Seattle, from Portland to Goble, inclusive, and all points on the Tacoma & Eastern, Columbia & Puget Sound, Bellingham & Northern, Spokane & Inland Empire, and Idaho & Washington Northern. The Butte gateway is open from all territory tributary to the Chicago, Milwaukee & St. Paul west of Butte, and in general to the same destination territory as is described in connection with the Silver Bow and Spokane gateways. The joint rates through Spokane and Silver Bow became effective about the year 1900, when there was very little lumber tributary to what was then the Oregon Railroad & Navigation Company. The rates were installed to attract tonnage from the connecting lines, and it is to be noted that following the same policy

the joint rates through Butte from mill points on the St. Paul were installed in 1910 when that line was extended to the coast. Since 1900 the Oregon Railroad & Navigation Company line has been extended and new branch lines have been purchased and built, so that there is now tributary to its successor, the Oregon-Washington Railroad & Navigation Company, a large amount of timber in eastern and western Washington, Idaho, and eastern Oregon. It is now contended that inasmuch as the mills on its lines produce sufficient lumber to supply all the markets on the Union Pacific system, the Oregon-Washington road is justified in denying access to markets along the Union Pacific lines to mills located on other lines. The cancellation of these routes is said to be in the general interest of the conservation of the revenues of the Union Pacific lines and also in the interest of its local mills, as it reserves to the latter a monopoly of the markets local to the Union Pacific lines.

The Oregon-Washington shows that in 1912, some 816 carloads of lumber and shingles were delivered to its rails by the Great Northern at Spokane, and that of this number 9 carloads originated at points also reached by the Oregon-Washington and only 71 cars went to competitive points of destination. Similarly it was shown that in 1912 there were delivered to the Oregon Short Line by the Northern Pacific at Silver Bow 1,994 cars, of which 1,479 were destined to Union Pacific system local points and 515 to competitive points. There was not much testimony given at the hearing regarding the Butte gateway because at the time the carriers did not consider that the cancellation of that route had been suspended, but it was said that the movement through Spokane and Silver Bow was representative of the traffic moving through Butte from St. Paul points. The Union Pacific lines contend that their local mills are excluded from markets that they should rightfully reach at a lower rate of freight than the mills on the Northern Pacific, Great Northern and St. Paul so long as lumber from local points on the Union Pacific's rails must pay the combination of local rates to reach consuming points on the other lines. Witnesses appeared in support of these cancellations who were operating lumber mills at points local to the Oregon-Washington. They testified that they considered this limitation upon the markets of their competitors located on other lines of road as an act of simple justice to them because the Northern Pacific and Great Northern had always refused to join in rates to local points of consumption on other lines from local points on the Oregon-Washington. Two of these witnesses, however, admitted that they would prefer to have through rates from their mills to destinations on the other lines, thus widening their markets. But being excluded from markets on the Northern Pacific and Great

Northern, they felt that they were entitled to a monopoly of all markets on the Union Pacific. Regarding this feature of the case the chief witness for the carrier asserted that the cancellations in question had been made in recognition of the wisdom of the policy pursued by the Great Northern and Northern Pacific. He insisted that this action by the Union Pacific lines can not be described as an act of reprisal, but that it was only a tardy recognition by his company of the wisdom of the course which competing lines have pursued.

The Union Pacific asserts that because of the two-line haul and the relatively low rates that prevail on lumber throughout this territory, the traffic from mill points on other lines is not attractive to the Union Pacific. As has been shown, it was sufficiently attractive to extend the same policy of joining in rates from mills on the St. Paul when that line was extended to the coast as had prevailed for ten years in connection with the Great Northern and Northern Pacific, and the record does not give any indication that these rates so long voluntarily continued are now unreasonably low. The question of the right of the carrier to limit markets and create a monopoly on behalf of protestants located on its line has been passed upon by the Commission in a long series of cases, familiar to all who have followed the discussion of that important question. *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C., 467; *Chamber of Commerce of Milwaukee v. C., R. I. & P. Ry. Co.*, 15 I. C. C., 460; *Standard Lime & Stone Co. v. C. V. R. R. Co.*, 15 I. C. C., 620; and *Rates from Walsenburg Coal Field*, 26 I. C. C., 85.

We have no hesitation in coming to the conclusion from the record on this phase of the case that the Union Pacific has failed to justify the advance which they propose in lumber rates from mill points on other lines.

COLORADO GATEWAYS.

Various tariffs affecting the movement of traffic of all kinds through the Colorado gateways are suspended in the third group of cancellations of routings. Stated briefly, these tariffs, if permitted to become effective, will result in canceling through routes and joint rates by way of the Colorado gateways on all traffic originating at points served by the Oregon-Washington Railroad & Navigation Company destined to the Missouri River or points east thereof, and conversely, on traffic originating at points on the Missouri River or east thereof having destination in Oregon-Washington Railroad & Navigation territory. Through routes and joint rates on traffic originating at or destined to points between the Colorado gateways and the Missouri River remain undisturbed. The amount of tonnage that has heretofore been moved through these gateways in

connection with the prairie lines is not shown of record, but it is said to be large. The lines operating east from Denver actively solicit the traffic in originating territory east and west. They are not represented in this proceeding and their absence is not explained of record. What actuated them to acquiesce in the course here being pursued by the Union Pacific is therefore a matter of conjecture.

The Union Pacific system lines justify their proposed action on the ground that the routes offered by its system are shorter by more than 100 miles than other routes between points of shipment and destination; that no through charges are advanced; and that they are entitled to the long haul in both directions in the absence of protest from the connecting lines. They contend that they have spent much money in improvements; that the lines have been double tracked for nearly the whole distance from Omaha to Granger, in the state of Wyoming; and that being in position to furnish better service than other lines they should be permitted to get the fullest return for themselves on traffic moving to and from their exclusive territory. The protestants deny the right of a railroad to cancel joint rates and through routes long in effect for the purpose of confining all business possible to its own rails and eliminating competitive conditions. They contend that to permit these cancellations is to create a monopoly of traffic and in effect is to take from the shippers the power to control the routing of their freight.

The route of the Union Pacific system lines extends from Portland, Spokane, and other points on the west to Omaha, Council Bluffs, and Kansas City on the east. All traffic moving between the points mentioned must necessarily pass through Cheyenne, in the state of Wyoming, located 106 miles north of Denver. From Cheyenne to Omaha the distance is 516 miles by way of the Union Pacific, and from Denver to Omaha the short line mileage is by way of the Chicago, Burlington & Quincy, 538 miles. Traffic delivered to or received from the Burlington at Denver must, however, be moved between that point and Cheyenne, 106 miles away. The Union Pacific route from Oregon-Washington points is therefore 128 miles shorter to Omaha than is that of any other line. From Cheyenne to Kansas City by way of the Union Pacific over its new cut-off route is 623 miles. Traffic moving between these points over the Rock Island, which has the shortest route through Denver, travels 742 miles, or 119 miles more than when hauled through by the Union Pacific. It is therefore plainly apparent that the Union Pacific offers the shortest route between the Missouri River and points local to its lines in Oregon and Washington.

There is some contention by the protestants that the rates as proposed will curtail the free reconsignment of shipments of apples from

the Oregon territory to the east. It appears that it is the effort of the protestants in the west to harvest their fruit crop and hurry it to storage on the east side of the Rocky Mountains as early as possible because under the present tariffs it may be reconsigned free from any such point over any route to destinations east of Denver, whether east or west of the Missouri River. This may still be done under the proposed tariffs to any consuming point west of the Missouri River but it can not be reconsigned on the balance of the through rate to points on the Missouri River or east thereof. The carriers admit that there is this defect in the present tariffs and if the difficulty suggested should arise they will revise their tariffs to permit as free movement of fruit as heretofore.

The protestants admit that in routing freight to the east it is the general practice to specify Union Pacific routing as far as the Missouri River because of the fact that it offers the shortest line and being, in fact, a one-line haul, affords a better service. They insist, however, that if that carrier is permitted to monopolize the business by cutting out the through routes, there will be no such incentive to efficient service as now exists.

There is a further specific complaint. A large amount of traffic consists of lumber from the Willamette Valley, which is sold to the Rock Island and other prairie lines, delivered on their rails at Denver. In such instances the shipper gets the benefit of paying *only* the Union Pacific lines' division of the through rate instead of the local rate to Denver. The Union Pacific insists that this question was passed upon by the Commission in *Lumber Rates from Mississippi to Eastern Points*, 27 I. C. C., 6, and that that case and the one before us here are identical in the facts presented.

With regard to the westbound rates through the Denver gateways, a somewhat more difficult problem is presented. It will be observed that the reverse of the situation as described for eastbound traffic is here before us. Traffic originates on other lines; ordinarily such lines would insist before the Commission upon their right to the long haul as originating carriers and would contend that the Commission could not compel them to deliver it up short of the Colorado gateways, but here the Union Pacific insists that the originating lines, for reasons sufficient to themselves, have not seen fit to protest against this adjustment and that the Commission is therefore without power to keep the routes open under section 15 as amended. While counsel frankly stated in oral argument that it was probably the intention of Congress under that amendment to give to the Commission the widest discretion in the matter of prescribing through routes and joint rates, he contends that under the language of the section in its amended form we have less power than formerly. After setting forth the cir-

cumstances under which the Commission may establish through routes, section 15 now provides:

And in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

The respondent insists that this provision applies to the Union Pacific system as a whole, because the Union Pacific Railroad Company owns all of the stock of the Oregon Short Line, which in turn owns all of the stock of the Oregon-Washington Railroad & Navigation Company with the exception of 15 shares out of a total issue of 500,000 shares. The record shows that all three companies have the same executive officers and that many of the operating officials of the three lines are the same. Their rails extend between the termini of the routes under discussion and the inclusion of their entire lines in such routes does not make them unreasonably long as compared with another practicable through route. It is contended by counsel for the protestants that the provision of the act above quoted was intended to apply only in a case parallel with the *Rates on Cotton Seed and its Products case, supra*; that is to say, its only application was in case the originating carrier had a line extending the whole distance from point of origin to destination. In other words, if the Union Pacific originated traffic in Kansas or Nebraska destined to points on its line in Oregon, it could not be compelled to short haul itself and give any part of the movement to a competing line, but that where the originating line does not extend all the way between the termini, the Commission has the widest discretion in fixing or continuing joint rates and through routes. We have pointed out the desirability of keeping open these gateways to shipments of deciduous fruits, and this view was met by a frank response from the carriers. That lumber shippers from Oregon mills will be driven out of a profitable market in the sale of their product to the prairie lines is equally clear in the record before us. It is also unquestioned that under the present tariffs active competition for the large traffic passing between the local territory of the Oregon-Washington and the Missouri River exists between all the prairie lines so far as their rails reach. The Union Pacific lines seek to protect their own revenues and waive aside these large public interests by a simple reference to the limitation, under section 15 as amended, upon our power to establish through routes. We can not read the act in this narrow manner. To break down

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routes long established by such a construction is a proposal that does not merit serious consideration. In *United States v. Union Pacific R. R. Co.*, 226 U. S., 61, full consideration was given to the practical monopoly of traffic that might be effected by the elimination of such competition as is here sought to be effaced. We have not regarded it as a part of our duty to administer the antitrust laws but the thought presented in that case shows fully the evil effect to the public that would flow from the elimination of the competitive routes to which we are here asked to give approval because we are powerless to prevent. We can not give assent to such a proposition. The matter of through routes and joint rates is not dealt with alone in section 15, but we must read, together with that provision, those contained in the first and third sections of the act. It is not necessary here to discuss again the power which we consider Congress has given us in this matter. We expressed fully our view in the case of *Flour City Steamship Co. v. L. V. R. R. Co.*, 24 I. C. C., 179, 184, and we here give full assent to the view we there expressed. We shall therefore enter an order making permanent for the statutory period the suspension of the tariffs seeking to cancel joint rates through the Colorado gateways.

PUGET SOUND BOAT LINES.

When the St. Paul line was extended to Seattle it entered into an arrangement with boat lines engaged in private transportation on Puget Sound under which tariffs were published establishing joint rates from water-locked mills on the west side of Puget Sound applying on shingles to the east. The rates so established were 5 cents per 100 pounds higher than the terminal rates applying from mills at Seattle and elsewhere in the coast group that were located on the rail lines. The rate so established was divided by giving to the boat line $12\frac{1}{2}$ cents per 100 pounds, or, in other words, the Milwaukee shrunk its revenue $7\frac{1}{2}$ cents under what it was receiving for hauling shingles from mills located on its line. The boat lines with which this arrangement was made were owned and operated for the most part in the interest of the water-locked mills which they served. They made no pretense of being interstate carriers beyond the mere concurrence in the Milwaukee's tariffs. They filed no reports with this Commission.

In order to meet this situation the Great Northern entered upon arrangements with independent boat lines quite different in character but equally unique. The boat lines here are not shown of record to have been financially of the same interest with the shingle mills, but made no effort to become amenable to our jurisdiction. The line of the Great Northern to the east extends northward from

Seattle along Puget Sound, passing through Edmonds, from which point, among others, joint rates on shingles were established with the boat lines on the basis of the terminal group, and the divisions gave to the water lines $7\frac{1}{2}$ cents per 100 pounds out of the terminal rates. Despite the appearance of the tariff, the shingle traffic does not originate at Edmonds. As in the case of the Milwaukee the shingle mills are located at water-locked points on the sound. They are hauled by the boat lines from the mill to Edmonds. At that point joint billing is made out, and, without unloading, the boat proceeds to Seattle and delivers the shingles to the Great Northern, which then transports them back through Edmonds to the east.

The carriers insist that following the arrangements described there ensued much rate manipulation the nature of which is not fully made clear of record, but the mere statement of such arrangements must bring condemnation upon them. The principle involved in the plan devised by the Milwaukee of securing this shingle traffic has been recently passed upon by the Commission in the *Industrial Railways Case*, 29 I. C. C., 212. The waste of transportation in hauling traffic from Edmonds to Seattle and back through Edmonds by the Great Northern can not be justified by the facts of the actual operation so skillfully concealed in the tariffs. Our order of suspension will be vacated, but in coming to this conclusion it must be understood that we do so solely because of the facts here disclosed. We believe that any proper development that will open our waterways to the use of the public should be encouraged.

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INVESTIGATION AND SUSPENSION DOCKET No. 334.
CHICAGO & NORTH WESTERN RAILWAY RECONSIGNMENT RULES.

Submitted February 14, 1914. Decided March 9, 1914.

1. Proposed rule under which respondent refuses to accept reconsignment orders for foreign-line points on freight loaded in Chicago & North Western Railway or Chicago, St. Paul, Minneapolis & Omaha Railway refrigerator cars, not found to effect unjust discrimination, nor to be unreasonable or otherwise in contravention of law.
2. *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39, distinguished.

J. E. Robinson for Albert Miller & Company.

Christen H. Skallerup for Skallerup Brothers.

C. C. Wright for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

CLARK, Chairman:

In a tariff of reconsignment rules intended to have become effective on November 7, 1913, but suspended by the Commission, the Chicago & North Western Railway Company incorporated the following:

(G) Reconsigning orders for points beyond the rails of the C. & N. W. Railway or the C. St. P. M. & O. Railway will not be accepted on perishable or other freight when loaded in C. & N. W. Ry. or C. St. P. M. & O. Ry. refrigerator cars.

Rule (F) of the same tariff provides:

When reconsignment of the freight is to points on connecting lines to which no joint through rates apply, these rules shall not be construed to give a shipper the right of requiring the cars of these companies to go beyond their own rails.

This rule was not questioned by the protestants, but is referred to merely as explanatory of the general policy of respondent.

While the rule under investigation applies to all perishable and other traffic, potatoes furnish the most important tonnage for the refrigerator equipment of the North Western lines. Potato shippers alone entered protests, and the testimony introduced was directed primarily to the effect of such a rule upon the potato trade.

The North Western system owns approximately 2,500 refrigerator cars, of which about 1,000 are devoted to the local merchandise, or

less-than-carload, traffic, leaving about 1,500 for carload traffic consisting of vegetables, including potatoes, canned goods, etc. This system handles from 8,000 to 10,000 cars of potatoes per season from Wisconsin, and is at present the principal potato carrier to Chicago. It was estimated that from 50 to 60 per cent of the cars upon arrival at Chicago are reconsigned to widely distributed territories throughout the United States, and a witness for one of the protestants shows that of a total of 4,950 cars shipped over the Chicago & North Western Railway to Chicago between August 1, 1912, and July 31, 1913, all but 205 cars were reconsigned or diverted at Chicago to other destinations. The past five years have witnessed a very material growth in the potato business on the North Western system, the bulk of the movement being during the three months beginning November 15 of each year. On account of this limited period, respondent is compelled to practice the strictest economy to conserve the car supply and meet the demands of its shippers. In *Protection of Potato Shipments in Winter*, 26 I. C. C., 681, we said, at page 684:

The potato crop of Wisconsin and Minnesota has become a large one, and much of it moves to the markets during the winter. The traffic, besides being very substantial, is now a permanent one; it moves regularly year after year and in growing volume. Elsewhere in the country, where the potato movement is large, special heater cars are made available to shippers, and box cars also are lined and equipped by the carrier at the beginning of the winter and kept in the service until the spring. *Boston Potato Receivers' Assn. v. B. & A. Ry. Co.*, 25 I. C. C., 159. Experience has demonstrated that potatoes may safely be carried, even in very harsh weather, in ordinary box cars so prepared and equipped with stoves and accompanied by attendants. Under these circumstances we are inclined to think that the traffic here is large enough not only to warrant the carriers in preparing for it in some such manner, but large enough and permanent enough to require them under the law to offer such a service to the shippers.

The testimony in the instant case is that 12 or 15 years ago practically all potatoes in this territory were transported in lined box cars; that there is still a heavy movement in such cars with no restrictions as to movement off the line of respondent; but that there is an increasingly heavy demand for refrigerators. Respondent's supply of system refrigerators more than equals the demand for local needs but is not adequate to meet this demand and at the same time to care for the heavy shipments for foreign-line points during the comparatively brief potato season. Consequently private-line cars and foreign-line refrigerators must be secured, and requisitions upon connections for empties must ordinarily be accompanied with promise of corresponding return loads.

The proposed rule is not intended to deny to shippers the necessary equipment for traffic tendered for through transportation to through-rate points, nor to in any sense nullify the offer of reconsignment at

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Chicago of shipments originally consigned and billed to that point. The rule, it is stated, is designed to conserve the supply of system cars for the general movement of the business of the North Western system and to insure notice at the time cars are ordered if they are desired for off-the-line points. If called upon for cars for direct through shipments from points of origin on its rails to foreign-line destinations or for cars for movement to Chicago and reconsignment thence, respondent can and does supply private-line refrigerators which may properly be sent to any destination, foreign cars received in the ordinary course of business, or foreign cars secured empty from connections for designated loading. During the winter season car shortages are common, and such shortages are attributed to the facts that in the winter months loaded cars move with less dispatch and empties are returned with less promptness, and that cars which are delivered in such large numbers to connections frequently are not returned during the entire shipping season, compelling respondent to have recourse to privately owned or foreign-line cars in order to meet its shippers' demands. Under existing conditions the direction or destination of the loads not being known, opportunities for prevailing on connections to supply cars are materially less.

During the shipping season respondent frequently holds in Chicago and outlying yards for delivery, for inspection, and for reconsignment from 300 to 400 cars of potatoes, and these, when detained at such outer yards as Mayfair and Proviso because of the cramped condition of the team and delivery tracks within Chicago, are not subject to demurrage or other detention charges.

Protestants contend that the proposed rule is contrary to the provisions of the act and conceive it to be an effort on the part of the carrier to restrict them in marketing their goods by forcing them to place orders for cars for specific routes or destinations. They aver that they can seldom know at the time shipments are started, where they will finally go, or to whom they will be sold; hence it is impracticable to give advance notice either of ultimate destination or routing, or that the transportation is, or is not, to end at Chicago. Their principal objection, however, is that the rule will make necessary frequent transfers of loads at Chicago at an estimated cost of \$12 to \$15 per car with undesirable delays on account of switching, awaiting cars for reloading, etc., and added risk of damage to and deterioration of the potatoes. On this point one witness shipping in the neighborhood of 1,000 cars per annum over the North Western anticipated considerable advantage to himself on the theory that small shippers at remote points would sell to him at sacrifice prices rather than undertake the transfers, or because of such transfers would be so handicapped as to be compelled to retire from business.

This witness stated that the reconsignment practice is largely the outgrowth of commercial conditions not created by the carrier. That this is true must be recognized, and as was said in *Diets Lumber Co. v. A. T. & S. F. Ry. Co.*, 22 I. C. C., 75:

The reconsignment privilege, whereby protection of the joint through rate is secured is not one to be demanded by the public as a matter of right; but it is a concession voluntarily extended by the carriers.

The Commission has not ordered the granting of such privilege except to remove unjust discrimination, nor have we required the broadening of the limits of rules of this nature already established by the carriers unless upon investigation such rules were found to be unreasonable or discriminatory.

Respondent here offers the privilege of reconsignment on basis of the through rate from point of origin to final destination; it expressly provides that such offer is not to be construed to give the shipper the right of requiring its cars to go beyond its own rails, where the reconsignment is to a point on a connecting line to which no joint through rate applies; and as to points to which through routes and joint rates are in effect it proposes to afford all necessary transportation required by law, but demands the shipper's cooperation in order that it may supply such cars as may be properly and economically devoted to the through movement. Is the requirement thus imposed unreasonable or otherwise unlawful?

The carrier has met its obligation under the law when it has equipped itself with sufficient cars to meet the requirements of its shippers and has established with its connections equitable car-interchange arrangements. If shippers elect to so conduct their business as to defeat the successful and economical allotment and interchange of equipment, it is not unreasonable for the carrier to restrict the reconsignment privilege in order to protect its interests.

Protestants refer to *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39, and rest in part upon the principles there announced. The complainant in that case, an operator of coal mines at Wilderman and St. Clair, Ill., stations on the Illinois Central Railroad, attacked as improperly limiting its market as a producer and miner of coal, a rule established by the defendant prohibiting the sending of its coal cars loaded with coal to the lines of certain designated carriers; and an order was sought requiring the defendant to furnish cars and facilities for transportation of coal to all points to which there were through routes and joint rates. The rule in question was established by the Illinois Central because of the confiscation of its cars by other railroads and in order that it might retain on its line sufficient equipment to serve the communities dependent upon it for fuel. We condemned as alike unlawful the temporary confiscation

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by carriers of the cars of other railroads and the placing of embargoes against cars being sent off the lines of the owners; we held that carriers must keep their through routes open and in operation and furnish the necessary facilities for transportation, and that the established through routes must be served without respect to the fact that in rendering the service the carriers' cars may be carried beyond their own lines. Among other things it was said:

The duty of the initial carrier to furnish equipment for a shipment which moves on to other lines is universally recognized, and in cases where that is impracticable or deemed unwise the carriers assume to bear the burden of the transfer from the equipment of one line to that of the other.

and—

The Illinois Central sought to protect "its own people," but in contemplation of the law there is no such thing as local traffic which enjoys rights superior to through traffic.

It will be noted that this case dealt more especially with the obligation of the carrier to supply the lawful facilities and transportation in connection with established through routes and joint rates and that it is thus differentiated from the instant case. The respondent here does not seek to evade its obligation to furnish the through transportation made mandatory under the statute. It provides, without reservation, cars needed for conveyance of freight to Chicago and proposes to comply in full with demands made at the shipping point for cars for transportation to through-route and through-rate points, but takes the position that when freight is tendered which is going beyond its rails, this fact should be stated at the time in order that it may furnish such cars as may suitably be applied to through transportation. A carrier's cars constitute one of its strongest assets, and respondent resists encroachment upon its right to regulate its car supply by shippers to whom reconsignment privileges are voluntarily extended.

Car shortages under prevailing commercial and transportation practices seem inevitable, and the common experience is that when one line is short, all lines in the same territory are similarly affected. However, shortages of equipment due to the tender of a large volume of a particular traffic within a limited period may, to some extent, be prevented if carriers are afforded full knowledge of shipper's requirements. There is no right inherent with the shipper to demand that any transfer resulting from the reconsignment at his request of freight originally consigned and billed to a given destination, shall be performed by the carrier, either at its own expense or otherwise; nor is there any provision of law under which a carrier may be compelled to possess itself of special equipment in such amount that a considerable portion of it would remain idle for six months in the year.

On this record there is no evidence that the proposed rule will effect unjust discrimination. The respondent has sustained the burden of proof of its substantial reasonableness, and we do not find that it otherwise contravenes the law.

It is stated of record that it is the intention of respondent not to apply the rule in controversy to shipments originating beyond its rails, such as apples and deciduous fruits from the Pacific coast, although such shipments may be loaded in Chicago & North Western Railway and Chicago, St. Paul, Minneapolis & Omaha Railway refrigerator cars. Manifestly such interpretation or application of the proposed rule would be unreasonable. It is our view that the rule should be revised to clearly state its limited application to shipments originating at points on respondent's lines. Permission is hereby granted to file such a revised rule upon not less than three days' notice, and the following form is suggested:

Reconsigning orders for points beyond the rails of the C. & N. W. Railway or the C., St. P., M. & O. Railway will not be accepted on perishable or other freight originating at points on the lines of said carriers when loaded in C. & N. W. Ry. or C., St. P., M. & O. Ry. refrigerator cars.

When such action has been taken the order of suspension will be vacated.

INVESTIGATION AND SUSPENSION DOCKET No. 279.

RATES ON POTASH AND OTHER COMMODITIES FROM
NORTH ATLANTIC SEABOARD POINTS TO CINCINNATI, OHIO, AND OTHER POINTS.

Submitted January 9, 1914. Decided March 2, 1914.

Imported salts formerly moved from north Atlantic ports to destinations in central freight association territory upon special import rates, with the rate to Chicago observed as the minimum as far east as Cincinnati. February 1, 1913, the import rates were canceled and superseded by domestic rates, regularly scaled upon the established percentage basis. July 1, 1913, tariffs were filed proposing to increase certain of these domestic rates by the use of the rate to Chicago as the minimum as far east as Cincinnati. *Held*, That the proposed increased rates have not been justified.

J. K. Corbett for German Kali Works, Incorporated.

Charles S. Bash for Bash Fertilizer & Chemical Company.

H. W. B. Glover for Virginia-Carolina Chemical Company.

G. M. Freer for Jarecki Chemical Company and Cincinnati Chamber of Commerce.

J. W. White and *W. D. Huntington* for International Agricultural Corporation.

Frederick L. Ballard and *Henry Wolf Bickel* for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and West Jersey & Seashore Railroad Company.

William C. Coleman for Baltimore & Ohio Railroad Company.

R. L. Russell for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By tariffs under suspension in this proceeding the carriers propose certain increases in the carload rates from north Atlantic ports to points in central freight association territory, on imported salts of various kinds known to the trade as kainit, hartsalz, sylvanit, manure salts, double-manure salts, muriate of potash, and sulphate of potash and chiefly used in the manufacture of fertilizers. Protests were filed by various manufacturers of fertilizers.

For many years kainit, muriate of potash, and sulphate of potash moved from north Atlantic ports under import rates, and for about two years prior to February 1, 1913, like rates were applied on all the articles named. During the latter period the rate from New

York, N. Y., to Chicago, Ill., was 19 cents per 100 pounds on all the articles except muriate of potash and sulphate of potash, each of which moved under a rate of 21 cents.

As to kainit and the two articles of potash, the import rates were several times increased during the period from 1907 to 1911, inclusive. Prior to 1907 the rate from New York to Chicago on kainit appears to have been 15 cents, and on the potashes 15 to 16 cents, and from Baltimore to Chicago, on kainit, 10 to 12 cents per 100 pounds, and on the potashes 10 to 13 cents per 100 pounds. The other articles, for the greater part of the period mentioned, were subject to class rates, and, apparently for that reason, their movement was comparatively light. Substantially the entire movement has been via Baltimore, Md., from which point to Chicago the rate was on the basis of the usual differential of 3 cents under the rate from New York. As to these import rates the carriers observed the rate to Chicago as the minimum to all points as far east as Cincinnati, Ohio, and thereby disregarded the percentage basis which generally governed domestic rates in this territory. On February 1, 1913, the import rates were abolished, which left in effect only the domestic rates.

From New York and Baltimore to Chicago the domestic rates are 22 cents and 19 cents, respectively, on each of the articles mentioned, and these rates are regularly scaled down, on the percentage basis, to destinations east of Chicago. Under this basis the rate to Cincinnati is 3 cents below the rate to Chicago; the rates to Indianapolis and Fort Wayne, Ind., 2 cents below Chicago; and the rate to South Bend, Ind., 1 cent below Chicago, while the rate to Louisville, Ky., is the same as the Chicago rate. By the tariffs under suspension, which were filed to become effective July 1, 1913, the carriers propose to establish rates to points as far east as Cincinnati which shall be the same as the domestic rates to Chicago, the effect of which would be to increase the rates to Cincinnati and points similarly situated and to deprive such points of rates based on the percentage principle.

The carriers have undertaken to justify the proposed increased rates largely upon the ground that the effect would be to place the points of destination in the same relation to each other that obtained under the import rates formerly in effect, and thereby to meet objections urged by certain Chicago shippers to the adjustment of February 1, 1913. It was testified on behalf of the carriers that during the years when the import rates were in effect, and when Cincinnati, Indianapolis, Fort Wayne, South Bend, Louisville, and Chicago all had the same rates on the articles in question, the movement of the traffic increased regularly; and it is contended that under the proposed adjustment all the points would be on a relatively fair basis in the manufacture and sale of fertilizers in competition with one another. A further contention is that the import rates were special

and it is suggested that the proposed increase is necessary to preserve the relation which formerly existed between Atlantic ports and rates from Gulf ports in the same class of service.

It is also suggested that under the rate situation as it existed in 1914, manufacturers of fertilizers at the destination were able to compete upon a fair basis, it is suggested that something more than this is necessary to justify the increase in rates which have been already increased in recent years.

It is also suggested that the existence for a long time as domestic rates of a substantial movement of the traffic in question under the principle which has been regularly scaled on the percentage principle which has been in effect between the east and central freight association territory and has been uniformly approved by the Commission in *Lawrence, Schmidt & Sons v. M. C. E. R. Co.*, 23 I. C. C., 681, 686-687. It is true, as pointed out upon brief on behalf of the carriers, that the Commission has intimated disapproval of special import rates below the domestic rate basis contemporaneously in effect, but this necessarily carries with it a suggestion of approval of the domestic rate principle as the one which should apply to all. It carries no suggestion that when a domestic rate ceases to be a water rate merely, and becomes a fact in carrying rate, it should not be scaled in the same manner as other domestic rates to the same destination points.

It is also suggested that in this proceeding the burden of proof is on the carriers to show that the proposed increased rates are reasonable. In fact, on the basis of record we are not convinced that the carriers have met the obligation thus placed

on them. The carriers have made comparisons of the suspended rates with rates from other ports, and these comparisons are attacked by the Commission as of no value. No discussion of the propriety of the proposed rates is necessary, however, in view of the fact that the carriers have failed, on the evidence presented, to show that the proposed rates are reasonable. It should also be noted that the proposed rates may not be justified upon the basis of "parity" with rates from the Gulf

ports requiring the carriers to maintain the rates for the satisfactory period.

No. 4359.

FORT SCOTT INDUSTRIAL ASSOCIATION

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

FOURTH SECTION APPLICATION No. 1898.

Submitted March 18, 1912. Decided March 2, 1914.

1. Class and commodity rates maintained by defendant from St. Louis, Mo., and East St. Louis, Ill., to Fort Scott, Kans., not found to be unreasonable or unduly prejudicial as compared with similar rates to Kansas City, Mo.
2. A part of Fourth Section Application No. 1898 for permission to continue lower rates from St. Louis, Mo., and East St. Louis, Ill., to Kansas City, Mo., than to Fort Scott, Kans., granted.

John H. Crain and J. C. Forester for complainant.

Fred H. Wood for defendant.

John Marshall and E. E. Smythe for the Public Utilities Commission of Kansas.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of the business men of Fort Scott, Kans. It alleges in its complaint that Fort Scott is on the line of defendant between St. Louis, Mo., and East St. Louis, Ill., and Kansas City, Mo., at a point approximately 100 miles nearer St. Louis and East St. Louis via that route than is Kansas City; but that notwithstanding this fact defendant maintains higher class and commodity rates from St. Louis and East St. Louis to Fort Scott than to Kansas City; and that such rates to Fort Scott are unreasonable, unduly prejudicial, and in violation of the long-and-short-haul clause of the fourth section of the act. Complainant seeks an order requiring defendant to establish rates from St. Louis and East St. Louis to Fort Scott which shall in no instance exceed the rates maintained by it from those cities to Kansas City and to award reparation to certain of complainant's members.

That part of Fourth Section Application No. 1898, filed on behalf of defendant, which seeks authority to maintain higher class and commodity rates from St. Louis and East St. Louis to Fort Scott than to Kansas City, has been heard and will be disposed of in connection with this case.

Fort Scott is in Kansas, near the Kansas-Missouri line, and is reached from St. Louis by three railroads—the Missouri, Kansas &

Texas; Missouri Pacific; and St. Louis & San Francisco. These roads also reach Kansas City, but the St. Louis & San Francisco is the only one via which Fort Scott is intermediate to Kansas City. The distance from St. Louis to Fort Scott via defendant's line is 342 miles; from Fort Scott to Kansas City, 99 miles; and from St. Louis to Kansas City through Fort Scott, 441 miles. The rates of all three lines from St. Louis to Fort Scott are the same.

Although the complaint covers all rates between the points mentioned, complainant confined the evidence almost wholly to the class rates. Those rates, from St. Louis to Fort Scott and Kansas City, are as follows in cents per 100 pounds:

St. Louis to—	Miles.	1	2	3	4	5	A	B	C	D	E
Fort Scott.....	342	74	61	45	32	27	30.5	25	20	15	13
Kansas City.....	441	60	45	35	27	22	24.5	19.5	17	13.5	11

Witnesses for complainant testified that they compete with dealers in Kansas City in the sale of their goods in the state of Kansas and elsewhere, and that the higher rates they must pay on their inbound shipments of raw materials from St. Louis, in connection with the outbound rates from Fort Scott, place them at a serious disadvantage as compared with dealers at Kansas City, who can avail themselves of the combinations of rates through Kansas City to the same destinations. Tabular statements were submitted to show how the members of complainant association, as manufacturers, are handicapped in various cities of Kansas by reason of the rate advantages enjoyed by Kansas City.

It is shown of record that the scale of class rates from St. Louis to Kansas City was made to equal the scale of rates from Hannibal, Mo., to Kansas City, a distance of 198 miles. The St. Louis-Kansas City lines being desirous of handling traffic originating in the east, destined to Kansas City, and also wishing to place St. Louis on as advantageous a footing as shippers at other Mississippi River crossings, felt compelled to meet the rates from Hannibal. Subsequently the Missouri railroad commission prescribed for a distance of 200 miles substantially the scale of class rates that had been in effect from Hannibal to Kansas City. Changes have since been made by the carriers, and rates from St. Louis to Kansas City in several instances are now less than the state commission's scale for 200 miles. The state commission's scale for 277 miles, the short line distance from St. Louis to Kansas City, which would have applied had it not been for the influence of the rates from Hannibal, is as follows, in cents per 100 pounds:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	71	61	50	44	36	40	33	25.5	19.5	14.5

The class rates are graded upward from St. Louis westward via the line of defendant in accordance with the distance scale of the Missouri railroad commission, until Lamar, Mo., is reached. North of that point the combinations through Kansas City would be less than if the scale were continued on the basis of the distance from St. Louis; consequently the rates diminish as Kansas City is approached. The following table fairly discloses the rate situation:

St. Louis to—	Miles.	1		3	4	5	A	B	C	D	E
Springfield, Mo.....	239	62	52	40	32	25	28	23.5	17	15	13
Lamar, Mo.....	302	74	64	45	32	27	32	25	20	15	13
Arcadia, Kans.....	324	74	64	45	35	27	33	25	20	15	13
Fort Scott, Kans.....	342	74	61	45	32	27	30.5	25	20	15	13
Hammond, Kans.....	349	73	61	45	32	27	30.5	25	20	15	13
Olathe, Kans.....	420	62	52	38	32	25	28	23.5	18	15	13
Kansas City, Mo.....	441	60	45	35	27	22	24.5	19.5	17	13.5	11

The table shows that Lamar, Mo., 40 miles nearer St. Louis than is Fort Scott, pays higher rates on classes 2 and A than does Fort Scott; that Arcadia, Kans., 18 miles nearer, pays higher rates on classes 2, 4, and A than Fort Scott. Olathe, Paola, and Pleasanton, Kans., points between Fort Scott and Kansas City, are reached from St. Louis by other lines that are more direct than defendant's, and their rates are influenced, if not wholly controlled, by these lines. Nevada, Mo., 21 miles to the east of Fort Scott on the Missouri, Kansas & Texas, has the same class rates from St. Louis as Fort Scott, except that the first-class rate is 71 cents, the rates to Nevada being controlled by the Missouri railroad commission scale. The rates from Kansas City to Fort Scott and to a number of other points in Kansas were adjusted on the basis of percentages of the combinations on Kansas City by an arbitration in 1886. Under the arbitration the rates to Fort Scott were fixed at 80 per cent. Changes have occurred since that time by which the Fort Scott percentage of the Kansas City combinations has been reduced.

Complainant alleges that the rates to Fort Scott are unreasonable, and introduced some evidence at the hearing on that subject; but in the main its evidence was directed to the comparisons above mentioned for the purpose of proving that the rates are unduly prejudicial and not in conformity to the long-and-short-haul clause of the fourth section of the act. Although Fort Scott is served by three railroads, complaint was made against the only line on which that city is intermediate to Kansas City from St. Louis. If it was the intention of complainant to seriously attack the reasonableness of the rates *per se*, it would appear that all three St. Louis-Fort Scott lines should have been made parties defendant.

In *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673; the rates from St. Louis and other Mississippi River crossings to Kansas
29 I. C. C.

rates, and as such should not be accepted as the measure of just and reasonable rates; it is suggested that the proposed increases are necessary to reestablish and preserve the relation which formerly existed between rates from Atlantic ports and rates from Gulf ports to these same destinations.

While it may be conceded that under the rate situation as it existed prior to February 1, 1913, manufacturers of fertilizers at the destination points referred to were able to compete upon a fair basis, it can not reasonably be questioned that something more than this is necessary to justify a further increase in rates which have been already very materially increased in recent years.

The present rates have been in existence for a long time as domestic rates, but necessarily with no substantial movement of the traffic question under them. They are regularly scaled on the percentage principle which has been long in effect between the east and central freight association territory, and has been uniformly approved this Commission. *Traugott Schmidt & Sons v. M. C. R. R. Co.* I. C. C., 684, 686-687. It is true, as pointed out upon brief on behalf of the carriers, that the Commission has intimated disapproval of special import rates below the domestic rate basis contemporaneous in effect, but this necessarily carries with it a suggestion of approval of the domestic rate principle as the one which should apply to imports. It carries no suggestion that when a domestic rate ceases to be a paper rate merely, and becomes in fact a carrying rate, it should be scaled in the same manner as other domestic rates to the destination points.

It is to be remembered that in this proceeding the burden of proof rests upon the carriers to show that the proposed increased rates are just and reasonable. Upon the facts of record we are not convinced that the carriers have successfully met the obligation thus imposed upon them.

The protestants have made certain comparisons of the suggested rates with rates on nitrate of soda, and these comparisons are accepted by the carriers as having little or no value. No discussion of the pertinency or value of such comparisons is necessary, however, in view of our finding that the carriers have failed, on the evidence presented by them, to justify the increased rates. It should also be noted that increased rates from north Atlantic ports may not be justified by a mere showing that they are "in line" with rates from other ports.

An order will be entered requiring the carriers to maintain their present rates as maxima for the statutory period.

No. 4359.
FORT SCOTT INDUSTRIAL ASSOCIATION

FORT SCOTT INDIAN
 HOUSE & SAN FRANCISCO

FOURTH SECTION

[illegible]

The image is a high-contrast, black-and-white scan of a textured surface, likely the cover or endpaper of an old book. It is characterized by a dense pattern of dark, irregular marks, scratches, and smudges against a lighter background. The marks vary in length and thickness, creating a complex, almost abstract visual texture. The overall appearance suggests significant wear, age, or a specific material like leather or parchment that has been heavily handled or damaged. There are no discernible text or figures present.

destinations, including Fort Scott, were in issue. We found the rates to many points were unreasonable and directed their reduction. In connection with this readjustment it was not found necessary to change the rates to Fort Scott to bring them into harmony with rates to more distant Kansas points.

One of defendant's officials testified that, on account of its long line to Kansas City, defendant can not furnish as prompt service as the more direct lines; that its traffic from St. Louis to Kansas City is relatively small; but that the company's management believes that its readiness to accept Kansas City business gives it strength in soliciting shipments for other destinations. This witness also testified that although its earnings under the Kansas City rates are relatively low per ton-mile, they are sufficient to cover the cost of service and produce a small profit, and therefore do not create a charge on other traffic; and that, since the short lines between St. Louis and Kansas City control the rates, the withdrawal of his company from participation in the traffic would be of no advantage to shippers at Fort Scott.

Complainant cited certain commodity rates from St. Louis to Fort Scott which are as low as commodity rates on the same articles to Kansas City, and contended that if the defendant is justified in granting as low rates to Fort Scott on those commodities as to Kansas City, it would be justified in granting equally low rates to Fort Scott on all other traffic. One of these articles on which an equality of rates is maintained is sugar, and it was explained by defendant that the parity of rates is due to the fact that sugar originates largely in New Orleans, and Fort Scott is nearer to New Orleans than Kansas City via the direct lines. The same explanation was given with reference to coffee which moves in large volume through the port of New Orleans.

It appears from the record that defendant, in publishing rates to Kansas City that are lower than the rates to Fort Scott, is meeting at Kansas City the rates of the shorter and more direct lines, over which it has no control. The Fort Scott rates have not been shown to be unreasonable, and no undue prejudice against Fort Scott, within the meaning of the statute, results from this adjustment. In our opinion the application of rates from St. Louis to Fort Scott that exceed the rates to Kansas City by the present difference is justified under the circumstances disclosed by the record, and should be allowed to continue. The fourth section application of the defendant will be granted, and the complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 278.
RATES ON FLAXSEED FROM MINNEAPOLIS TO FREDONIA, KANS., AND OTHER POINTS.

Submitted November 12, 1913. Decided March 9, 1914.

Rates on flaxseed at present in effect Minneapolis to Fredonia, Kans., and other points, are lower than rates on wheat to the same destinations. In tariffs under suspension respondents propose increases in excess of the wheat rates. The rates on flaxseed Minneapolis to Chicago and St. Louis are no higher than those on wheat; *Held, That*—

1. The rates on flaxseed from Minneapolis and all other points to the various consuming markets should bear a consistent relationship to one another and to the rates on wheat and other grain. The Commission can not allow the rates which respondents have proposed to become effective unless those to competitive markets are also increased to a level correspondingly higher than the wheat rates to those markets.
2. Carriers will be permitted to increase the rate Minneapolis proper to Fredonia from 15 to 20½ cents per 100 pounds, and to establish rates to all other destinations involved no higher than the present wheat rates.
3. No good reason has been advanced for maintaining different rates from Minneapolis on flaxseed coming from points beyond than from Minneapolis proper.

Hadley, Cooper, Neil & Wilson for Hess & Small.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

George A. Kelley for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This investigation concerns the propriety of proposed increased local and proportional rates on flaxseed in carloads from Minneapolis, Minn., and other points to Kansas City, Mo., Fredonia, Kans., and surrounding territory. By an order of the Commission under date of June 27, 1913, the tariff schedules which contain the increases were suspended until October 29, 1913, and by subsequent orders of July 23 and September 23, 1913, they were further suspended until April 29, 1914.

Since May 21, 1908, the proportional rate from Minneapolis to Kansas City on flaxseed originating beyond Minneapolis has been 10½ cents and the flat rate on local traffic from Minneapolis to Kansas City has been 14 cents per 100 pounds. Since January 1, 1906, with

the exception of a few months in 1907, the rate to Fredonia has been 15 cents per 100 pounds. This rate is published by some lines as a proportional rate applicable to flaxseed originating beyond Minneapolis and by others as a flat rate from Minneapolis proper to Fredonia. In the schedules under suspension respondents propose to increase the proportional rate Minneapolis to Kansas City to 16½ cents, and the flat rate to 23½ cents per 100 pounds, and to discontinue the through rate to Fredonia of 15 cents. This will make applicable on traffic to Fredonia the combination on Kansas City of 26½ cents per 100 pounds.

The provisions in respondents' tariffs with regard to the application of proportional rates are very liberal, and it appears that no traffic moves under the flat rates from Minneapolis proper to the destinations herein involved. In *In re Rates for Transportation of Flaxseed*, 25 I. C. C., 337, we had under consideration the propriety of increasing the proportional rate from Minneapolis to Chicago from 7½ cents to 10 cents per 100 pounds. The Minneapolis-Chicago rate, unlike those here under consideration, is restricted to flaxseed which pays an inbound rate of 10 cents or more. It was found, however, that the volume of flaxseed moving out of Minneapolis is very small compared to the amount moving in, so that there are always sufficient inbound expense bills on hand representing flaxseed upon which the proportional rates are applicable. From this it is apparent that in considering flaxseed rates from Minneapolis we have to deal primarily with the proportional rates. It would appear that in the present case even these are to a large extent paper rates.

The only protest made against the proposed increases was by Hess & Small, who operate a flaxseed crusher at Fredonia, and the case centers largely about the rates to Fredonia. At the hearing it developed that a crusher is in operation at Des Moines, Iowa. No proportional rate is published to Des Moines, and the flat rate from Minneapolis proper is 14 cents per 100 pounds, which it is proposed to increase in the schedules under suspension to 17½ cents. The Fredonia and Des Moines crushers are the only ones in operation in the territory affected by the proposed increases. There was formerly a crusher at Kansas City owned by the American Linseed Company, of New York, the largest producer of linseed oil in the country. This has been discontinued and it appears from a letter in evidence that the owner professes no interest in the proposed increased rates.

It may be well at the outset to give a statement with regard to the fields of production of flaxseed and the centers for crushing the seed. Flax requires new ground for its successful production, and consequently the field of its largest production has gradually moved westward. About 20 years ago it was Iowa, with Chicago as the

largest crushing center. At the present time the largest production is in the Dakotas and Montana, which are called the northwestern field. A smaller field of production is Kansas and the adjoining territory of Oklahoma, Missouri, Colorado, and Wyoming. Flaxseed is crushed at Minneapolis, Duluth, St. Louis, Chicago, Toledo, Cleveland, Buffalo, New York and other eastern points. The principal crushing center is Minneapolis, to which the great northwestern field is directly tributary. In *Rates on Linseed Oil*, 26 I. C. C., 265, it was found that the linseed oil output of the Minneapolis crushers almost equals the combined output of all the others. The Minneapolis market fixes the price on flaxseed.

On behalf of the Fredonia crusher it is contended that the present rates are reasonable and that the proposed rate to Fredonia will deprive it of a necessary market in which to purchase a portion of its raw material. The testimony shows that the annual production of flaxseed in Kansas runs from 200,000 to 500,000 bushels. The Fredonia crusher has a capacity of about 200,000 bushels for the crushing season, which extends approximately seven months from the time the crop is harvested. The Kansas crop matures about three weeks in advance of that of the Dakotas and is marketed from 30 to 60 days after it is harvested. The crushers at Chicago, St. Louis, and Minneapolis bid sharply for this early supply in order to lengthen their crushing season and to meet the early demands for linseed oil, oil cake, and oil meal. Consequently prices are usually higher during the marketing of the Kansas crop than they are after the market becomes settled when the bulk of flax reaches the market from the northwest. The price of flaxseed fluctuates greatly during the crushing season. For these reasons it is stated the protestant finds it inadvisable to buy its entire season's requirements of flax at the time the Kansas crop is marketed and must consequently rely upon northwestern flax purchased in the Minneapolis market for part of its supply. It is stated that without the Minneapolis supply protestant would not be able to run its crusher more than half the ordinary seven months' season. During the year ending July 1, 1913, 330 carloads of flaxseed were shipped into Fredonia, of which 42 carloads came from Minneapolis. During the last seven years 155 carloads were received by protestant from Minneapolis, an average of 22 carloads per year. It is contended that a rate from Minneapolis as low as 15 cents per 100 pounds is necessary for the continuance of the Fredonia crusher.

Comparisons are made with the flaxseed rates from Minneapolis to Chicago and St. Louis in support of protestant's contention that the proposed increases are unreasonable. We will later refer again to the Chicago and St. Louis rates. Protestant also calls attention

to the rate of 10½ cents per 100 pounds on flaxseed meal from Minneapolis to Kansas City and of 22½ cents per 100 pounds on linseed cake from Minneapolis to Galveston, Tex. The latter yields 2.95 mills per ton-mile for the distance of 1,524 miles. It is stated that Minneapolis has an advantage over Fredonia in outbound rates on the products of the flaxseed crusher. It is also pointed out that the proposed rates will yield a higher per-ton-mile revenue for the distance of 693 miles Minneapolis to Fredonia than for the shorter distance of 540 miles Minneapolis to Kansas City. Respondents submitted an exhibit at the hearing showing that the rate to Fredonia would be 21 cents if the proposed Kansas City per-ton-mile rate were applied to the distance from Minneapolis to Fredonia. But it is asserted in protestant's behalf that even with the 21-cent rate to Fredonia it would be unable to continue in business.

On behalf of respondents it is alleged that the present rates are unremunerative and that the proposed increases are reasonable. Attention is called to the increase from 7½ to 10 cents per 100 pounds in the rate from Minneapolis to Chicago and from 10½ to 14 cents Minneapolis to St. Louis, which was permitted to become effective in *In re Rates for Transportation of Flaxseed, supra*. One of the considerations which led to this conclusion was that the 7½-cent rate was abnormally low as compared with rates on wheat and coarse grain. The rates of 10 cents Minneapolis to Chicago and 14 cents to St. Louis are the same as the rates on wheat from Minneapolis to the same points. On page 340 of the opinion in the above case the following statement was made:

It is apparent that, as a rule, the flaxseed rates both local and proportional are at least as high as the wheat rates, and it is our conclusion that in view of the relative value, relative risk, and relative volume of traffic of flaxseed as compared with coarse grain and wheat the flaxseed proportionals from Minneapolis may properly be as high as those on wheat.

However, the rates we now have under consideration are in excess of those on wheat from Minneapolis to the same destinations; thus, while the wheat rate Minneapolis to Kansas City is 15½ cents per 100 pounds, the proposed rate on flaxseed is 16½ cents. In this connection it should also be stated that the rate on wheat to Kansas City was until recently 14½ cents per 100 pounds, the 1-cent increase having been allowed to become effective via most of the routes in the same tariffs which carried the increases on flaxseed here involved. Respondents contend that the relatively higher rate on flaxseed is justified because flaxseed is more valuable than wheat and other grain and is more liable to leakage. Upon the latter point it was testified that protestant's damage claims have been extremely low upon the shipments received at Fredonia. In *In re Rates for Trans-*

poration of *Flaxseed, supra*, the testimony was otherwise, as appears from the following quotation from page 339 of the opinion:

By way of justifying the proposed advances, the respondents also urged that the present flaxseed rates are unremunerative. It was stated that the total movement of flaxseed on the Chicago, St. Paul, Minneapolis & Omaha Railway between October 1, 1911, and May 12, 1912, amounted to 1,178 tons and during this period the damage claims on flaxseed amounted to \$459.97, or almost 2 cents per 100 pounds. No other figures were offered along this line but it was stated by several expert witnesses for the carriers that the claims for damage to flaxseed were greater per bushel than on other grains.

However this may be, it is evident that the rates on flaxseed from Minneapolis to the various consuming markets should bear a consistent relationship to one another and to the rates on wheat and other grain.

The following table shows rates in cents per 100 pounds and per ton-mile on flaxseed and wheat from Minneapolis to the destinations named:

From Minneapolis to—	Miles.	Commodity.	Per 100 pounds.	Per ton-mile.
			<i>Cents.</i>	<i>Cents.</i>
Chicago.....	408	Flaxseed and wheat.....	10	0.049
St. Louis.....	586	.....do.....	14	.048
Kansas City.....	1 640	Flaxseed, present.....	10.5	.039
		Flaxseed, proposed.....	16.5	.061
		Wheat.....	15.75	.058
Fredonia.....	1 663	Flaxseed, present.....	15	.043
		Flaxseed, proposed.....	25.5	.076
		Wheat.....	20.5	.069

¹ Based on line of Chicago Great Western from Minneapolis to Kansas City. The short-line distance, Minneapolis to Kansas City, is 493 miles, made via the Chicago, Milwaukee & St. Paul to Mason City, Iowa, the St. Paul & Kansas City Southern to Des Moines, Iowa, and the Chicago, Rock Island & Pacific beyond. Based on the latter route the short line to Fredonia is 646 miles.

From this table it will be observed that the present rates to Kansas City and Fredonia are lower, while those proposed in the schedules under suspension are higher per ton-mile than those to Chicago and St. Louis. Respondents seek to justify the proposed higher basis to Kansas City and Fredonia upon the ground that the general level of rates from Minneapolis to the Missouri River is higher than that of rates from Minneapolis to St. Louis and the east. This is evidenced by the higher class rates to Kansas City than to St. Louis. These are as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
To St. Louis.....	63	52½	42	26	21	26	21	18	15	13½
To Kansas City.....	85	69	48	34	28	34	28	23	20	17

In respondents' behalf it was further stated that the proposed increases are in conformity with increases which have been made from Minneapolis to the territory herein affected on linseed oil and oil cake and which respondents intend to make on oil meal. The

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Flaxseed rates were increased from 10½ cents to 16½ cents per 100 pounds under suspension of the Commission in its Rates of Transportation. The Commission further stated in its report that it is not a party to this proceeding and that it is not a party to absorb the switching at Minneapolis.

The table given below shows the prices of flaxseed and the total production in the United States of America for the period 1901 to 1912, inclusive:

Comparison of prices and crop of flaxseed in the United States of America for the period 1901 to 1912, inclusive.

Year.	Prices.					
	Highest price.	Lowest price.	Per cent increase.	Per cent decrease.	Per cent increase.	Per cent decrease.
1901	\$1.46	\$1.34	8.20	8.20	100.00	100.00
1902	1.73	1.55	10.42	10.42	108.20	108.20
1903	1.19	1.08	9.24	9.24	82.20	82.20
1904	1.28	1.05	18.18	18.18	88.20	88.20
1905	1.49	1.38	7.97	7.97	100.00	100.00
1906	1.24	1.09	12.78	12.78	84.68	84.68
1907	1.47	1.08	35.19	35.19	100.00	100.00
1908	1.70	1.12	52.73	52.73	100.00	100.00
1909	2.04	1.34	52.24	52.24	100.00	100.00
1910	2.44	1.90	27.37	27.37	100.00	100.00
1911	2.70	1.93	39.89	39.89	100.00	100.00
1912	2.53	1.22	50.80	50.80	100.00	100.00
		1.25				

The report of the

Report of Chamber of Commerce - Minneapolis, Minn.

It will be observed that the price of flaxseed has uniformly been higher than that of wheat. This comparison of the relative value of flaxseed and wheat would seem to lead to the conclusion that the rate for the transportation of flaxseed may properly be higher than the rate for the transportation of wheat. Based alone upon a comparison with wheat rates, the proposed rates under suspension may not be objectionable. However, we can not allow the proposed increases to be made for the reason that the relationship between the rates on wheat and flaxseed in the proposed tariffs has not been established. Assuming, without deciding, that the proposed rates on flaxseed are reasonable, the proposed rates on wheat and flaxseed, as proposed by the American Cigar and Fredonia, is just and proper, in the view that they would nevertheless be unduly discriminatory. The relationship has not been established in rates to numerous other markets, especially markets of the importance of Chicago and St. Louis. For these reasons the suspended tariffs can not be permitted to become effective.

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To all points herein involved carriers may establish rates no
han those at present maintained to the same points on wheat.

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ts per 100 pounds. The Des Moines rate yields 10.6 mills per

le for the distance of 265 miles and is as high as the rate from

apolis to St. Louis for a distance of 568 miles.

further find that there is no reason for establishing different

from Minneapolis on flaxseed coming from points beyond than

Minneapolis proper. Consequently, the rates we have suggested

be published from Minneapolis proper, and upon their publica-

espondents may cancel the present proportional and the present

ates from Minneapolis. An order will be entered accordingly.

L. C. C.

linseed-oil rates were increased Minneapolis to Missouri River points from 10½ cents to 16½ cents and from Minneapolis to Chicago from 10 cents to 15 cents per 100 pounds under permission of this Commission in *In re Rates for Transportation of Flaxseed, supra*. It is further stated in respondents' behalf that the larger volume of flaxseed brought into Minneapolis is over the lines of carriers which are not parties to this proceeding and that respondents are required to absorb the switching at Minneapolis.

The table given below shows the prices of flaxseed and wheat and the total production in the United States for each year of the period 1901 to 1912, inclusive:

Comparison of prices and crop of flaxseed and wheat; prices based on Minneapolis market.

Year.	Flaxseed. ¹			Wheat. ²		
	Highest price.	Lowest price	Crop, in bushels.	Highest price.	Lowest price.	Crop, in bushels.
1901.....	\$1.88	\$1.34	26,000,000	\$0.80½	\$0.62½	748,490,000
1902.....	1.78	1.15	29,285,000	.82	.65½	670,083,000
1903.....	1.19	.91	27,301,000	.92½	.73½	637,822,000
1904.....	1.28	1.06	23,400,000	1.26½	.85½	552,400,000
1905.....	1.49	.96	28,478,000	1.29½	.78½	692,979,000
1906.....	1.24	1.09	25,576,000	.86½	.70½	735,261,000
1907.....	1.41	1.06	25,851,000	1.20½	.77½	684,087,000
1908.....	1.50	1.12	25,805,000	1.27	1.00½	664,602,000
1909.....	2.04	1.34	19,513,000	1.45	.98½	787,186,000
1910.....	2.84	1.89	12,718,000	1.29½	1.01½	695,443,000
1911.....	2.70	1.93	19,370,000	1.12½	.93	621,338,000
1912.....	2.53	1.22	30,000,000	1.19½	.82½	730,367,000
1913, June 14.....		1.28				

¹ Based on figures submitted by protestant.

² Based on Thirteenth Annual Report of Chamber of Commerce, Minneapolis, Minn. Prices quoted are on best grade hard wheat.

It will be observed that the price of flaxseed has uniformly been higher than that of wheat. This comparison of the relative value of flaxseed and wheat would seem to lead to the conclusion that the rates for the transportation of flaxseed may properly be higher than those for transporting wheat. Based alone upon a comparison with the wheat rates the flaxseed rates under suspension may not be objectionable. Nevertheless, we can not allow the proposed increases to become effective for the reason that the relationship between the rates on wheat and flaxseed in the proposed tariffs has not been established at competitive markets. Assuming, without deciding, that the relationship in the proposed tariffs between the rates on wheat and flaxseed, Minneapolis to Kansas City and Fredonia, is just and proper, the rates under suspension would nevertheless be unduly discriminatory to the extent that they exceed the wheat rates, because the same relationship has not been established in rates to numerous other markets, especially markets of the importance of Chicago and St. Louis. For these reasons the suspended tariffs can not be permitted to become effective.

However, in most instances some increase may properly be permitted. To all points herein involved carriers may establish rates no higher than those at present maintained to the same points on wheat. The rate on wheat must be regarded as the maximum rate on flaxseed between these points because the wheat rate is the maximum at points competitive with the above. This will result in an increase from 10½ cents to 15¾ cents per 100 pounds in the rate from Minneapolis to Kansas City and from 15 cents to 20½ cents in the rate to Fredonia. The rate from Minneapolis to Des Moines will remain as at present, 14 cents per 100 pounds. The Des Moines rate yields 10.6 mills per ton-mile for the distance of 265 miles and is as high as the rate from Minneapolis to St. Louis for a distance of 568 miles.

We further find that there is no reason for establishing different rates from Minneapolis on flaxseed coming from points beyond than from Minneapolis proper. Consequently, the rates we have suggested may be published from Minneapolis proper, and upon their publication respondents may cancel the present proportional and the present flat rates from Minneapolis. An order will be entered accordingly.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 170.
RATES ON EXCELSIOR AND FLAX TOW FROM ST. PAUL,
MINN.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF EXCELSIOR FROM ST. PAUL, MINN., AND OTHER POINTS TO CHICAGO, ILL, AND OTHER POINTS.

INVESTIGATION AND SUSPENSION DOCKET No. 182.
IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF FLAX TOW, FLAX MOSS, AND FLAX FIBER BETWEEN ST. PAUL, MINN., WINONA, MINN., AND OTHER POINTS, AND CHICAGO, ILL., PEORIA, ILL., KANSAS CITY, MO., AND OTHER POINTS.

Submitted November 19, 1913. Decided March 2, 1914.

A carload minimum weight which is reasonably adapted to the needs of the carriers and the great majority of shippers will not be increased because one shipper, by the expenditure of exceptional effort and expense, finds himself able to load more heavily than can his competitors; neither will this Commission under such circumstances prescribe a lower rate per 100 pounds conditional upon the use of a higher minimum weight as the measure of the carload.

John W. Keogh for John W. Keogh & Company.

Robert H. Widdicombe for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

A. F. Cleveland for Chicago & North Western Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In *Keogh v. C., B. & Q. R. R. Co.*, 24 I. C. C., 606, it was held that the rates on excelsior in carloads from St. Paul to Chicago, Ill., St. Louis, Mo., and Missouri River points should not exceed the

rates contemporaneously in effect on flax tow. Thereafter the rates on excelsior were reduced to equal those on flax tow. Following that, the rates on both commodities were increased to the basis formerly governing the movement of excelsior. The tariffs naming these increases were suspended, the matter was heard under Investigation and Suspension Dockets Nos. 170 and 182, and the Commission held that the carriers had justified the increases to Chicago. While it did not approve the increases to other points, it authorized the carriers to make certain increases, somewhat less in amount than those proposed in the suspended tariffs. 26 I. C. C., 689.

On July 24, 1913, John W. Keogh, trading as John W. Keogh & Company, a protestant in the original proceedings, petitioned for a rehearing in the suspension cases above mentioned. The petition recites that the new rates on excelsior are based upon a 20,000-pound carload minimum, whereas formerly the minimum carload weight was 30,000 pounds. To this latter minimum protestant had accustomed himself and accommodated his business, and he prays here for the restoration, upon basis of a 30,000-pound minimum, of rates somewhat lower than those now applying upon carloads of 20,000 pounds. A rehearing was ordered and has since been had.

John W. Keogh is the owner of certain patent rights under which he manufactures an excelsior which may be compressed and baled to greater density than ordinary excelsior, but which nevertheless retains its resiliency. In baling his excelsior Keogh uses a press of the ordinary type, but of heavier construction and extraordinary power, and thus secures denser and heavier bales. With such bales protestant is usually able to load more than 30,000 pounds in a car 40 feet or more in length. But this he accomplishes only with the expenditure of exceptional effort and expense, greater than are incident to the loading of ordinary excelsior to meet the 20,000-pound minimum. Furthermore, weather conditions must be considered in getting 30,000 pounds in a 40-foot car, and at times a deficiency of only 1 inch in the height of the car makes it impossible to load that amount.

From January 1, 1913, to October 31, 1913, Keogh shipped from his St. Paul, Minn., factory, via the Chicago, Burlington & Quincy Railroad, 139 cars with an average lading of 31,078 pounds of excelsior. Practically all of these were 40 feet 5½ inches or more in length, and some were furniture cars. Against this the carriers point to the showing made upon the original hearing in this matter, where competitors of Keogh testified to their inability to load more than the 20,000-pound minimum; also to the showing there made of the actual loading of such competitors, to the same effect. Furthermore, the present minimum of 20,000 pounds is based on the standard 36-foot car and is subject to rule 6-B of the western classification,

under which the minimum weight on 40-foot equipment is 22,400 pounds. The contention of the carriers is that even with Keogh's more compact bales and more expensive methods of loading he is unable to put 30,000 pounds in the ordinary 36-foot car, but that he requires equipment of 40-foot length or over in order to load the 30,000 pounds which he advocates as the minimum carload weight.

Protestant here stands much in the same position as did complainant in *Planters' Compress Co. v. C., C., C. & St. L. Ry. Co.*, 11 I. C. C., 382. The Commission there said, at page 405:

If the rate on a given article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate in our opinion does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per 100 pounds. Particularly is this so, as we think, when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons. No classification can be so minute as to conform to the differing varieties and conditions of traffic. To separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification.

Considering all the facts and conditions appearing of record, it is our conclusion that protestant's prayer should be denied. The present proceedings should therefore be discontinued, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 315.

RATES ON GASOLINE ENGINES AND WINDMILLS.

RATES ON WINDMILLS AND OTHER ARTICLES, INCLUDING GASOLINE ENGINES, IN MIXED CARLOADS FROM EASTERN SHIPPING POINTS TO POINTS IN CALIFORNIA AND OTHER STATES.

Submitted January 21, 1914. Decided March 2, 1914.

Proposed tariffs which eliminate the inclusion of gasoline engines with windmills in mixed carload shipments not found to be unreasonable. Order suspending operation of tariffs vacated.

J. L. Coleman for Transcontinental Freight Bureau and carriers represented thereby.

W. J. Evans for National Implement & Vehicle Association.

J. M. Bodenberger for Baker Manufacturing Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The protest here is because the proposed tariffs under suspension eliminate gasoline engines from mixed shipment with windmills and windmill appliances to California terminals and intermediate points from territory of origin east of the Missouri River. The specific protests come from Chicago and points in the Chicago group, from which the terminal rate on the present windmill mixture, including gasoline engines, is \$1.50. By the proposed elimination of gasoline engines from this mixture they will take a rate of \$1.40 to the terminals and \$1.60 as a maximum to intermediate points, in straight carloads of 30,000 pounds minimum. The less-than-carload rate is \$3.40. If they are mixed with windmills as heretofore, the rate on the mixture will be computed on basis of class A, which will have the effect of increasing the rate from \$1.50 to \$1.77 both to the terminal and as a maximum to the interior from this group.

Prior to September, 1912, there was no mixture permitted of gasoline engines with windmills at one rate, under Countiss' transcontinental tariff 1 L, then in effect. Effective in that month agricultural implements, windmills, and gasoline engines, were permitted to be shipped in mixed carloads at \$1.60 per 100 pounds, under the then proposed Countiss' transcontinental tariff 1 M, by which the carriers undertook to make a general readjustment of their

transcontinental commodity rates to California terminals. The operation of this tariff was suspended by the Commission's order, but was finally permitted to become effective as to many of its items following hearings and informal conferences between shippers, the carriers, and the Commission, an account of which procedure is fully set forth in the Commission's report in the disposition of that case. *Transcontinental Commodity Rates Westbound*, 26 I. C. C., 456.

In the meantime this \$1.60 rate by tariff supplement had been reduced to \$1.50, which is the rate on the windmill mixture, including gasoline engines, it is now proposed to increase. In the final readjustment of this particular item in transcontinental tariff 1 M, made in connection with the case cited, the carriers eliminated the agricultural implement-windmill mixture and at the same time withdrew the privilege of shipping gasoline engines with agricultural implements, but left undisturbed the privilege of mixing gasoline engines with windmills at the one rate applicable to the carload. The retention of this latter mixing privilege was due, the carriers state, to an oversight, which they are now attempting to correct by the proposed tariff under suspension.

Gasoline engines are not a necessary part of or usual appurtenance to windmills. They may at times be attached to windmills in weather calms or other emergencies, but such use is merely one of the many to which they may be incidentally put and is not peculiar to windmills. Gasoline engines move in carloads and may be considered a carload article of traffic and a separate article of traffic. Their rate of \$1.40, minimum 30,000 pounds, does not appear unjust by comparison with the \$1.50 rate on windmills, minimum 24,000 pounds. A minimum carload of gasoline engines is in value about twice that of a minimum carload of windmills.

The question here raised by protestants goes not so much to whether the proposed rate is reasonable, either inherently or comparatively, as to the commercial necessity of the small manufacturer who does not usually receive orders for gasoline engines in carloads but ships them largely in small consignments along with the other articles included in the windmill mixture. We are not convinced upon this record, in fact no effort has been made by protestants to show, that the carload rates on windmills or gasoline engines separately are unreasonable in themselves. Neither are we convinced that it is unreasonable on the part of the carriers to withdraw the privilege of mixing gasoline engines with windmills, an independent and unrelated article of traffic.

This conclusion is not affected by the fact, as shown by protestants, that the carriers serving the north coast terminals have not proposed to take the same action with respect to this mixture as have

the carriers to the California terminals. The direct and rate-making routes to the north coast terminals are via the lines of carriers which have indirect routes to the California terminals or do not reach those terminals at all, and we can not hold the carriers to the California terminals to be directly responsible for any discrimination resulting by reason of lower rates in effect via the lines to the north coast.

One of the protestants herein, the Baker Manufacturing Company, of Evansville, Wis., according to the testimony of its witness at the hearing, shipped eight carloads under the present tariff to California terminals during each of the past two years. During the same period it has not shipped that many cars to the north coast, although the rate has been the same. Its objection to the proposed tariffs goes not so much to the effect thereof on the rate in cents per 100 pounds as to the effect upon its assortment of stock on the coast where it has branch houses.

We find that the carriers have justified the proposed tariffs and the order of suspension will be vacated.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 275.

LUMBER RATES FROM LOCAL POINTS ON THE ALABAMA
GREAT SOUTHERN RAILROAD TO CHATTANOOGA,
TENN.

Submitted February 25, 1914. Decided March 3, 1914.

Proposed increased rates on lumber from points in Alabama and Georgia and on shingles from Sulphur Springs, Ga., to Chattanooga, Tenn., found unreasonable and present rates required to be maintained for the future.

O. L. Bunn for protestants.

R. Walton Moore, Charles J. Rixey, jr., and Willis H. Fowle for Alabama Great Southern Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

This investigation is the result of proposed increases in rates on lumber in carloads from Porterville, Ala., and stations north thereof to Chattanooga, Tenn., and on shingles in carloads from Sulphur Springs, Ga., to Chattanooga. Supplement No. 1 to Alabama Great Southern Railroad tariff I. C. C. 1075, filed to become effective June 23, 1913, was suspended upon protest of the Chattanooga Manufacturers' Association on behalf of certain local lumber dealers. This tariff cancels current special commodity rates, and in lieu thereof provides for the application of rates based on the Alabama Great Southern interstate mileage scale carried in tariff I. C. C. 1114. The increases are from $\frac{3}{4}$ to $1\frac{1}{4}$ cents per 100 pounds, and apply from 15 stations, Morganville, Ga., to Porterville, Ala., inclusive, the former 12 and the latter 61 miles distant from Chattanooga. Lumber rates from stations south of Porterville to Meridian, Miss., 295 miles from Chattanooga, to which point the line of the Alabama Great Southern extends, are based on the interstate mileage scale. In justification of the increase respondent says that the special commodity rates were compelled and in no way reflect its judgment with respect of their reasonableness. The general objection of the protestant is that the present rates are just and reasonable, and furthermore, that they should not be disturbed, in view of their long standing and the fact that business has been developed and shipments are still moving on that basis. The value to be given such circumstances in determining the reasonableness of a rate has been frequently stated by this Commission. It is sufficient to say that the fact that investments have

been made upon the strength of a given rate may not be considered as controlling or preclude an increase in a rate found unreasonably low.

The testimony of respondent is that from Porterville and stations north thereof the departure from the interstate mileage scale was brought about by cross-country competition created by the Chattanooga Southern, now the Tennessee, Alabama & Georgia Railroad, which extends from Gadsden, Ala., to Chattanooga, a distance of approximately 90 miles, and parallels the line of the Alabama Great Southern the entire distance. Intermediate to and paralleling the Alabama Great Southern Railroad and the Tennessee, Alabama & Georgia Railroad is the Lookout Mountain range. The maximum air-line distance between the two roads is about 12 miles and by the cross-country wagon roads 18 or 20 miles.

It appears that prior to 1899 sawmill operations were confined first to the valley, later to the slopes adjacent to the roads, and then extended into the interior as the timber was cut; that in 1899 the mills operating between Sulphur Springs, Ga., where competition was first felt, and the corresponding Tennessee, Alabama & Georgia shipping stations reached a distance between the two roads where the rate situation became the chief factor in the wagoning of lumber in the joint territory. In other words, that, as the producers had to go farther from the lines of the railroad to obtain their supply there was reached an intermediate territory from which lumber could be hauled to either of the two roads with substantially equal facility.

Between Chattanooga and Wauhatchie, Tenn., a distance of 6 miles, no traffic is originated by the Alabama Great Southern, by reason of its trackage arrangement with the Nashville, Chattanooga & St. Louis Railroad, and as far as Trenton, Ga., 18 miles south of Chattanooga, the movement is confined to lumber originating in the valley adjacent to the line on the western slope of Lookout Mountain. Competition is removed from the territory on top of the mountain, due to the accessibility of the Durham branch of the Central of Georgia Railroad, which extends from its main line at Chickamauga, Ga., in a north-westerly direction across the Tennessee, Alabama & Georgia Railroad to the top of Lookout Mountain at a point about 9 miles from Chattanooga, and runs thence south about 6 miles to Durham, Ga., opposite Trenton. There is still a movement of lumber from Trenton, Rising Fawn, Valley Head, Fort Payne, Collbran, and Porterville, but the evidence is that this is confined to mills at or near these stations or which draw their lumber from the territory west of the Alabama Great Southern Railroad.

On May 2, 1909, the rate on shingles in carloads from Sulphur Springs, Ga., to Chattanooga, theretofore carried on the interstate mileage scale, was withdrawn and a special commodity rate made effective. With this exception the special commodity rates apply on lumber only, while the interstate mileage scale includes various kindred commodities.

Exceptions to the Alabama Great Southern interstate mileage scale made in the first instance at Sulphur Springs, were gradually extended until June, 1907, when all stations from Porterville, Ala., to Morganville, Ga., were granted the special commodity rates on lumber.

As competition no longer exists, it is contended that the reduced rates have served their purpose, and that this was recognized by the Tennessee, Alabama & Georgia Railroad by an increase in July, 1911, of practically 1 cent per 100 pounds in its rates. While competition may have exerted an influence or have been the principal inducement to the reduction of the rates, it does not follow that rates thus established were upon an unreasonably low basis, and it is not enough for respondent to show that this competition is no longer present. Where a carrier has voluntarily recognized cross-country competition, upon a subsequent increase being made, it becomes the duty of this Commission to determine whether such increased rates are just and reasonable for the service performed.

The interstate mileage scale is graded from 4½ cents per 100 pounds at a distance of 12 miles to 6 cents at 61 miles, on which the revenue per car of 30,000 pounds is \$13.50 and \$18, respectively. Continuing south from Porterville this scale reaches a maximum of 11 cents at Meridian, Miss., 295 miles. Under the special commodity rates the charge ranges from 4 cents for 12 miles to 5½ cents for 61 miles, on which the earnings are from \$12 to \$16.50 per car of 30,000 pounds. Taking as a standard of measurement rates via lines serving Nashville and Memphis, as well as Ohio River crossings and Gulf ports, which comparison may properly be made, in view of the fact that the Alabama Great Southern carries the same rates on hardwood and pine, both being produced in the territory traversed by that road, a result is shown which apparently supports the claimed relative reasonableness of the Alabama Great Southern interstate mileage scale as an entirety, but it also discloses that to many of the shorter-distance points rates via the Alabama Great Southern would be comparatively greater under the interstate mileage scale. We are not convinced that rates to any of the points involved in this proceeding are unreasonably low, nor is this indicated by an examination of rates carried by other roads into Chattanooga.

The increase of the Tennessee, Alabama & Georgia Railroad, made in 1911, placed the rates of that line practically upon a parity with the present rates of the Alabama Great Southern for distances up to 61 miles. Respondent asks consideration of the fact that there is a charge of \$2.50 per car for delivery to industries located upon the Chattanooga Belt Railway, and that this charge is absorbed by the Alabama Great Southern. The charge is also absorbed by the Southern Railway. Delivery by the Alabama Great Southern to plants on the Chattanooga Belt Railway is in effect delivery to industries located on its own terminals, as the Belt Railway is operated by the respondent.

It is our conclusion that the proposed increased rates have not been justified. We are of the opinion that the present rates are just and reasonable and should be continued in effect. An order will be entered accordingly.

29 I. C. C.

necessary here to discuss again the power which we consider Congress has given us in this matter. We expressed fully our view in the case of *Flour City Steamship Co. v. L. V. R. R. Co.*, 24 I. C. C., 184, and we here give full assent to the view we there expressed.

Upon the same grounds as are laid down in our decision in the case above cited, it is our opinion that respondents have not justified the proposed elimination of through routes and joint rates via the Colorado gateways. Respondents will therefore be required to cancel the tariff under suspension and to maintain for the statutory period the through routes at present in effect via the Colorado gateways. An order will be entered accordingly.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 293.
REFRIGERATION CHARGES ON FRUITS AND VEGETABLES FROM COLORADO TO KANSAS POINTS.

Submitted November 15, 1913. Decided March 9, 1914.

By a provision in the suspended tariff relating to the transportation of fruits and vegetables from points in Colorado to points in Kansas, the Missouri Pacific Railway Company seeks to eliminate an arrangement for furnishing refrigeration, known as "shipper's icing," under which the shipper is allowed to indicate on his bill of lading the amount of ice he desires placed in the car en route, to be furnished by the carrier at \$2.50 per ton; the carrier desiring to substitute therefor a stated charge of \$40 per car;
Held, That—

1. The carriers' position that the service should be furnished at a stated charge is correct.
2. The \$40 charge proposed in the suspended tariff compares favorably with other icing charges approved by this Commission, and so far as the Commission can judge from the present record it appears to be a reasonable one. Order of suspension vacated.

Henry G. Herbel, Martin L. Clardy, and Fred. G. Wright for Missouri Pacific Railway Company.

A. A. Hurd for Atchison, Topeka & Santa Fe Railway Company.

E. H. Hogueland and O. R. Hambric for Hutchinson and Wichita, Kans., produce companies.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This proceeding involves the suspension of Missouri Pacific Railway Company's tariff I. C. C. A-2376, which sought to make effective August 7, 1913, a stated refrigeration charge of \$40 per car on shipments of fruits and vegetables from stations in Colorado to all points of destination in the state of Kansas.

The points of origin involved herein are stations located on the Denver, Laramie & Northwestern Railroad, the Denver & Salt Lake Railroad, and the Great Western Railway. These carriers are short lines which radiate northwardly and westwardly from Denver. None of them exceeds 50 miles in length. Stations on the Missouri Pacific Railway, Colorado & Southern Railroad, and Denver & Rio Grande Railroad, in Colorado, are included as points of origin in the suspended tariff, but it was testified that no traffic has moved therefrom.

necessary here to discuss again the power which we consider Congress in this matter. We expressed fully our view in the case of *Steamship Co. v. L. V. R. R. Co.*, 24 I. C. C., 184, and we here give the view we there expressed.

Upon the same grounds as are laid down in our decision above cited, it is our opinion that respondents have not proposed elimination of through routes and joint rates radio gateways. Respondents will therefore be required to tariff under suspension and to maintain for the statute through routes at present in effect via the Colorado order will be entered accordingly.

The method of refrigerating cars of these commodities in force previous to the publishing of the suspended tariff and now maintained as a result of the suspension is as follows:

When shipments are to be made, since there are no icing facilities at the points of origin, empty refrigerator cars are first sent to Denver. At that point the bunkers of the car are filled with ice the evening before the loading is to be done, according to directions indicated by the shipper. The car is then sent to the station of origin of the shipment and there loaded. The shipper executes his bill of lading and notes upon it his instructions as to icing the car in transit. Reicing stations on the route of the Missouri Pacific to the principal Kansas destinations involved, Wichita and Hutchinson, are located at Denver and Pueblo, Colo., and Hoisington, Kans. The icing service desired by the shipper is performed by the carrier at a tariff charge of \$2.50 per ton for the ice actually used.

The carriers insist that the "shipper's icing" plan is very unsatisfactory, and their purpose in the publication of the suspended tariff is to put into effect a provision, such as is applicable in every other state in the Union, stating a definite refrigeration charge. From the same territory in Colorado to the Kansas points in question a stated refrigeration charge of \$40 per car is in effect in tariffs of other carriers, namely, the Union Pacific Railroad; Chicago, Burlington & Quincy Railroad; Chicago, Rock Island & Pacific Railway; and the Atchison, Topeka & Santa Fe Railway.

The carriers object to the "shipper's icing" plan for a number of reasons. The tariff rate of \$2.50 per ton for the ice used does not, they claim, cover the cost of the ice to the carriers. This figure, they allege, is the result of a condition which existed at Missouri River points a number of years ago, where natural ice was available at a low cost. Competition between carriers gradually extended this territory westward until the icing points involved in the present case were included.

There is no uniformity as to the reicing required by different shippers, either as to the amount of ice to be furnished or the stations at which reicing is desired. The refrigerator cars from the points of origin in this proceeding are often placed en route in trains of refrigerated products from points farther west which move under a stated refrigeration charge. The result of this situation, it is alleged is that it is difficult for the carriers' employees at reicing stations to ascertain which cars are moving under "shipper's icing," and the difficulty is increased by the fact that there are so few of them. From the testimony it would seem that in consequence no effort is made to ascertain under which method of refrigeration a car is being forwarded, and the practice apparently is to fill cars to capacity. After

the statement of the ice furnished on different cars has been checked a bill for any ice in excess of shipper's instructions is sent to the party who pays the refrigeration charges. The result of this is that the person to whom the bill for additional ice is rendered refuses to pay it on the ground that the carrier has not complied with the instructions on the bill of lading.

The instructions as to reicing are alleged to be in many cases indefinite and ambiguous. These instructions are followed by the railroads as they interpret them and often controversies between railroad and shipper arise as to the amount of icing required under these instructions.

The American Refrigerator Transit Company, which has furnished some cars for the traffic in question, states that it does not care to handle the business except at a fixed charge. The small lines concerned have no refrigerator cars of their own, and under the "shipper's icing" plan are compelled to pick up whatever equipment they can to move the traffic. Therefore it is alleged that a substitution of the proposed stated refrigeration provision will result in shippers on the small railroads being assured of a satisfactory supply of refrigerator equipment from the American Refrigerator Transit Company.

The carriers assert also that they are confronted with claims for damage due to the practice of skimping ice to avoid expense under "shipper's icing." A witness for protestants stated, however, that during his three years' experience the firms he represented had filed but one claim for damage.

The objections to the method of assessing and collecting icing charges under the "shipper's icing" plan is one of the strongest reasons the carriers urge in support of a stated charge. One of the notations placed upon bills of lading under the "shipper's icing" plan is "reice if not delayed." A car moving under such instructions via Missouri Pacific, for example, arrives at destination with an icing charge of \$25. A car shipped via a competing route moving under similar instructions arrives at the same destination with an icing charge of \$20. The result, of course, is that the latter company receives any future business which might move. Such a result, it is alleged, may be brought about by the failure of competing carriers to report icing or by reporting icing in a less amount than that actually furnished, and it is contended that the method itself invites such manipulation of the charges for the service for business-getting purposes.

We are of opinion that the various objections above indicated are of substantial merit and that the carriers' position that the service should be furnished at a stated charge is correct. It may be no

in this connection that the desirability of a fixed charge for the refrigeration service is admitted by protestants in their brief. We are further of opinion that the result of the change in method of furnishing this service will be to serve the public interest in a more satisfactory manner than under the "shipper's icing" plan, for the reason that it will place all carriers and shippers upon a parity as regards the charges received and paid for this service, and will remove whatever opportunity may exist for competing carriers improperly to use the "shipper's icing" as a means to secure business. Under our conclusions, as stated above, there remains for determination by the Commission the reasonableness of the charge of \$40 per car for this service.

The movement of a car of these products under stated refrigeration is as follows: The evening before the car is to be loaded it is sent to Denver, where it is iced to capacity with 10,000 pounds. The car is then sent to the point of origin of the shipment, where it is loaded the next morning with the commodity to be shipped. It is stated to be a practice among the shippers to take from 2,000 to 4,000 pounds of this ice from the bunkers and break it up and place it in the body of the car. This is known as "body ice." The car is then returned to Denver, where it is reiced. The amount of ice used in reicing at this point was testified by respondents to average from six to seven thousands pounds. The car is then sent forward and is stopped at Pueblo, Colo., where the next icing station is located. The car arrives there the second morning. Reicing at this point requires about 3,000 pounds. The car is again reiced at Hoisington, Kans., with from 2,000 to 3,000 pounds of ice. Deliveries of these shipments are usually made at Wichita and Hutchinson, Kans., the third morning after loading. It will thus be seen from the evidence of the carriers that the amount of ice used per car varies from 10 to 12 tons.

The protestants challenged the statement that 10,000 pounds of ice are loaded in the car when it is initially iced at Denver, and in support of their contention introduced a letter from an employee of the dairying division of the American Refrigerator Transit Company, wherein the statement is made that the bunker capacity of cars varies from 8,000 to 10,000 pounds, and that it is not possible to ice cars to the full cubical capacity of their bunkers. It is stated therein that it is usual to allow 1,000 pounds for shrinkage—that is, to estimate that the car could be loaded only to a weight 1,000 pounds less than the stated capacity. The low figures of capacity given by the employee of the American Refrigerator Transit Company were explained by counsel for respondents to be due to the fact that agents, when asked the cubical capacity of bunkers, always make it low for the reason that this is necessary in order to prevent the ice com-

panies overcharging them. It appears that in handling dairy products the icing is done by private companies. It is alleged that if these companies knew the capacity of cars was 11,000 pounds, for instance, they would base their charge upon the capacity of the car rather than the actual amount of the ice placed in the bunkers. To clear up these discrepancies respondents were given permission at the hearing to submit to the Commission a statement as to the actual cubical capacity of the cars. They have offered a letter from the manufacturers of the cars, from which it appears that the bunkers hold from 12,000 to 14,000 pounds of ice.

The cost of ice to the carriers at Denver is \$2.50 per ton. It was stated that the natural price of ice at this point was in excess of this amount, but that by reason of a contract which the carriers have there they are able to secure it at this low figure. The carriers state, however, that the people furnishing the ice are doing so at a loss. This was controverted by the protestants, who submitted evidence that they had been quoted a price of \$2.50 per ton for ice at Denver. At Pueblo the cost of the ice runs as high as \$5 per ton, but the normal price was stated to be between \$3.50 and \$4 a ton. At Hoisington the icing, under normal conditions, is done with ice secured at Great Bend, the average cost of which is from \$3.50 to \$4 per ton, running as high as \$6 in abnormal seasons. At these figures the cost of the ice necessary to properly refrigerate a car is from \$28.75 to \$33.25 during a normal season.

Other items of expense which the carriers contend should be taken into consideration in arriving at a fair charge for this service are maintenance of refrigerator cars, mechanical inspection of the body of the car exclusive of running gear, inspection of bunkers to ascertain the amount of ice required to be put in them, liability for damage to the contents of the car, and other overhead expenses. The carriers also contend that they are entitled to a reasonable profit on this service. In the case of *Arlington Heights Fruit Exchange v. So. Pac. Co.*, 20 I. C. C., 106, the Commission fixed a charge of \$5 as a reasonable one for repairs to a car moving under refrigeration from California points to Chicago. The carriers in this proceeding contend that the chief damage to cars under refrigeration is the throwing of ice into empty bunkers and that, therefore, \$5 is a reasonable charge on the movement from Colorado points to Kansas. Protestants contend, however, that in view of the fact that the distances for the movement in the present case are so much less than those in the *Arlington Heights case*, *supra*, a \$5 charge for repairs is too high.

Protestants compare the proposed charge of \$40 per car with the charges they formerly paid for refrigeration on cars of vegetables

shipped over the Atchison, Topeka & Santa Fe Railway. The amount of ice necessary via that route has ranged from 10,800 pounds to 17,500 pounds, at a cost of from \$13.50 to \$18.75 per car. Protestants claim that this difference has not been and can not be justified by the respondents. The explanation of this situation would seem to be that the charge of \$2.50 per ton for ice does not represent the actual cost, and that the Santa Fe, under the "shipper's icing" arrangement was more efficient in complying with the restricted icing instructions of the protestants. However, as has been shown above, the charge via the Santa Fe at the present time is \$40 per car.

Protestants call attention to the fact that Missouri Pacific tariff I. C. C. A-2376, a portion of the same tariff under suspension in this case, provides for a refrigeration charge of \$25 per car on fruits and vegetables from points north of Denver to destinations in Colorado. This charge is subject to a condition to the effect that if a shipper furnishes a release, and no reicing is furnished en route, the rate will be \$20 per car. This amount the respondents state was the result of compliance with an order of the Colorado railroad commission. There is nothing before us in this record to indicate upon what showing the charge of \$25 per car was arrived at by the Colorado commission.

The protestants stated at the hearing that they would be willing to execute a release to the carrier to eliminate icing at Hoisington if it would result in their securing a lower charge for the service. It would seem, however, that if it is necessary for a shipment to be reiced at Hoisington, and we believe from the record that it is, it should be done, and the shipper should not be allowed to control the action of the carrier in that respect. If the Commission were to require a provision in the tariffs of respondents to the effect that a lower charge might apply on shipments not reiced at Hoisington than on shipments which were reiced at that point, it is evident that there would be opportunity for a recurrence of some of the difficulties which the carriers have experienced under the "shipper's icing" plan. One shipper might furnish a release and another not. This would cause confusion in determining the cars to be reiced, and might create opportunity for improper undercharging of the kind described above.

The \$40 charge proposed in the suspended tariff compares favorably with other icing charges approved by this Commission, and so far as we can judge from the present record it appears to be a reasonable one.

We hold, therefore, that the respondents have justified the proposed increase, and the order of suspension will be vacated.

No. 5236.
AMERICAN HAY COMPANY
v.
CENTRAL VERMONT RAILWAY COMPANY.

Submitted May 10, 1913. Decided March 2, 1914.

1. Defendant's tariff rule limited storage of hay at pier 29, East River, New York, N. Y., to no more than five carloads for any one consignee, any cars in excess of that number to be held at New London, Conn., or other points on its line subject to a storage or demurrage charge of \$1 per car per day; *Held*, That such rule is not unreasonable or discriminatory, and that complainant's traffic is not thereby subjected to undue prejudice.
2. Rule providing for exemption from demurrage charges when same accrue on account of bunching required to be incorporated in tariff.
3. Reparation awarded with respect to certain demurrage charges.

George W. Jackson for complainant.

D. T. Lawrence for defendant.

REPORT OF THE COMMISSION.

By THE COMMISSION:

Complainant is a corporation, with principal office at New York, N. Y. By complaint, filed October 5, 1912, it alleges that unreasonable and unlawful demurrage and dock-storage charges were collected by defendant in 1912 on certain carload shipments of hay, consigned to New York, N. Y.; and that its traffic was subjected to undue prejudice and disadvantage by reason of such charges. Reparation and the establishment of reasonable demurrage rules and regulations for the future are asked.

Many shipments are involved, and the parties did not put in evidence the facts respecting each shipment, but only the facts respecting certain shipments which are said to be typical of the entire situation. Defendant concedes that some refund should be made to complainant, in view of the facts which will be hereafter stated; and the parties have in effect stipulated that, if the Commission will determine the general basis upon which settlement of the claim should be made, they will be able to agree upon the amount of reparation, there being no dispute as to facts relating to the movement of each car upon which demurrage or dock-storage charges were assessed.

Demurrage and dock-storage charges amounting in the aggregate to about \$3,500 were collected by defendant on complainant's shipments under rule 5 (c) of its tariff, I. C. C. A-3211, containing rules governing lighterage and transfer in New York harbor, the material parts of which are as follows:

Hay or straw not taken or properly ordered lightered from pier 29, E. R., on the day of arrival or next working day * * * will thereafter, until removed from the premises, be subject to storage charge of \$1.50 per car per day or fraction thereof. Storage at pier 29, E. R., will be furnished at any one time for no more than five cars for any one shipper, consignee or notify party, and any cars in excess of that number will be held at New London, Conn., or elsewhere on this company's premises, and storage or demurrage charges will be assessed thereon at rate of \$1 per car per day or fraction thereof, computed from first 7 o'clock a. m., after arrival at holding point.

Prior to September 23, 1911, no demurrage charge was collected by defendant for detention of cars at holding points beyond New York. Therefore, the burden of proof to show that such charge is just and reasonable is upon defendant.

Defendant's witness stated that its ordinary practice under the rule is as follows: If at the close of business on a particular day, complainant has not reduced its stock in storage to less than five carloads, no more hay consigned to it will be brought to New York on the boat leaving New London at 11 p. m.; and when complainant has reduced its stock of hay in storage below the five-car limit, defendant will bring from New London as many cars as conditions on the pier will permit.

The majority of the shipments involved in this proceeding originated at points in Canada, along the Grand Trunk Railway. All were consigned through to New York. During 1912 the hay crop in the middle west and in New York state was practically a failure. For this reason, and because of an embargo issued by the New York Central against the movement of hay to New York via its line, an unusually large volume of traffic was tendered for transportation to that point via defendant's line. The shipments were transported to New London, Conn., by rail, and thence to New York by car ferry. The ferry made one trip per day, leaving New London at 11 p. m. and arriving at New York at about 6 a. m. The distance between these points is about 110 miles. The maximum capacity of the ferry was about 25 cars.

From June 10 to June 24, 1912, inclusive, the operation of defendant's ferry service was impeded by a strike, and shipments consigned to complainant were held in the yards at New London, Norwich, and Willimantic, Conn., and Palmer, Mass., hereinafter referred to as the holding points. Both prior to and during the strike a large volume of traffic was consigned to complainant via defend-

ant's line. Demurrage charges were assessed on all shipments detained at the holding points during the strike except as to certain cars which were reconsigned.

On June 11, 4 cars of complainant's hay were on pier 29, East River, defendant's receiving and delivering station at New York, and 14 cars were held at New London. On June 23, 55 cars were on hand at the holding points, 41 of which reached those points while the strike was in force. On June 24 there were 87 carloads of hay at the holding points, of which about 65 were consigned to complainant and the remaining 22 to 10 or 12 other receivers of hay. On July 9 defendant issued an embargo against shipments of hay to New York, and on that date 26 carloads of complainant's hay were on pier 29 and 65 carloads at the holding points, or 26 carloads more than at the end of the strike.

During the congestion complainant reconsigned certain of the cars from the holding points, the details as to one of such shipments being as follows: Grand Trunk car 8591 arrived at Palmer on June 20 (during the strike); moved to New London on August 25; and was reconsigned to a dealer at that point on August 30. Demurrage charges amounting to \$41 were collected on this car. A deduction of \$11 was made from the demurrage bill on account of the strike.

Defendant maintains lighters for the delivery of carload shipments of hay from pier 29 to points or vessels within the limits of New York harbor, the charge for lighterage of a single carload being \$6, while no charge is made for lots of two or more cars; lighterage directions to be given by consignee prior to noon of the working day after arrival of car at the pier. An allowance of 3 cents per 100 pounds is also made to independent lighters for delivery of shipments of one or more cars; lighterage directions to be given not later than the working day after arrival of car. On export shipments defendant allows 10 days' free time, exclusive of the day of arrival at holding points, provided documents are presented showing that the traffic will not be detained on defendant's pier, but will be lightered immediately upon arrival to the vessels upon which the hay is to be exported.

In justification of the rule above quoted, defendant's witness stated that it was issued to protect the receivers of hay and straw who promptly remove their traffic, as well as receivers of other commodities, and to prevent one or two hay shippers from monopolizing the pier; that it was established because of the lack of storage facilities at the pier; that it restricts only the number of cars that will be stored, and not the number that will be delivered; that prior to the issuance of the rule as many as 300 cars have been detained at holding points on its line, resulting in congestion as far north as Windsor, Vt., 171 miles north of New London; that by allowing dock-storage

charges to accrue on a few cars at pier 29 consignees had obtained free storage on cars at the holding points; and that when it transports to pier 29 traffic such as hay, which is denied entrance to public warehouses, defendant has no option but to become a warehouseman for such period of time as may best suit the consignee.

The witness for the complainant testified that prior to the strike there was a shortage of hay at New York and coastwise points, the selling price of hay at that time being from \$3 to \$7 per ton higher than after the strike; that by the time the strike terminated shippers had flooded the market to secure the benefit of the high prices, and this resulted in a supply in excess of the demand; that the failure to deliver hay during the strike resulted in the cancellation of certain export orders, and forced complainant to find a local market for such shipments; and that this was difficult because of the market congestion and drop in prices. Complainant contends that the rule in issue is unreasonable, for the reason that shipments should be delivered at the billed destination before any demurrage charges accrue; and that it is discriminatory and prejudicial, because it applies only to hay and straw and complainant is practically the only receiver affected by it.

At the hearing defendant admitted that no demurrage charges should have been assessed during the strike, because during that period complainant had less than five carloads of hay in storage at New York; that subsequently, although complainant had more than five cars at New York, defendant should have held cars at holding points and assessed the demurrage charge of \$1 per car per day instead of forwarding same to New York and assessing the dock-storage charge of \$1.50, and on such cars it is willing to refund to complainant 50 cents per car per day; that some allowance should properly be made because of the bunching of cars due to the strike, as some congestion existed on June 24, whereas none had developed on June 10. Complainant's witness stated that on certain days after the strike it had no hay in New York, while demurrage charges were assessed on cars at holding points. Defendant admitted that demurrage charges did not lawfully accrue under those conditions and expressed willingness to refund any such charges. We are of opinion and find that refund of demurrage charges should be made to complainant to the extent indicated in this paragraph, with interest from the date of payment of the charges. We are further of opinion and find that the tariff was unreasonable because as it did not contain a provision for additional free time on account of bunching, similar to rule 8, section B-2, of the national car demurrage rules, and that complainant is entitled to reparation to the extent that refunds would be due under said rule, as to the 41 carloads which accumulated at the holding points during the strike.

Defendant's witness stated that it has been willing at all times to give information to complainant as to the numbers of cars which arrive at holding points, and to forward to New York such particular cars as may be designated by complainant. We are of opinion that defendant's agents at holding points should notify complainant within 24 hours after arrival that cars have been constructively placed at those points, such notice to show point of shipment and car number and initials. The record does not show whether or not such notice was sent to complainant, but we are of opinion that under the tariff the demurrage charges lawfully accrued, even though defendant failed to so notify complainant.

With the exceptions above noted, we find that the defendant has justified the rule in question and that it has not been shown to be unreasonable or to subject complainant and its traffic to undue prejudice. The record indicates that complainant had no warehouse or premises for the handling of hay; that its practice was to use defendant's pier as a salesroom; and that no directions for delivery were given to the carrier until a sale had been effected. The witness for complainant admitted that the shipments could have been handled as delivered if the hay had been sold before its arrival at the pier.

As to the shipments which were diverted, we are of opinion that no refund should be made except as to cars which arrived at holding points during the strike or which were bunched in transit.

Complainant contended that an embargo should have been issued by defendant at an earlier date in order to avoid congestion, and that its failure to do so resulted in the accumulation of cars and the assessment of the charges in question. We do not agree with this contention. The issuance of an embargo at an earlier date would have deprived the receiver of hay, who promptly removed his traffic from the pier, of the right to receive shipments via defendant's line because of the failure of another receiver to handle his shipments in like manner.

An order will be entered requiring defendant to amend its tariff by incorporating therein a rule providing for additional free time on account of bunching, and for notification to consignees when cars are constructively placed at holding points.

We are of opinion and find that complainant was damaged to the extent that the demurrage and dock-storage charges collected upon the shipments in question exceeded the amount that would be due on basis of the conclusions announced herein. In view of the agreement of the parties to settle the demurrage claims upon the basis found proper by the Commission, it is not believed that it will be necessary to enter an order in that respect. The parties may adjust the claim upon the basis of our conclusions herein, and report to the Commission the total amount paid under such adjustment.

No. 5690.
WOODWARD-BENNETT COMPANY
v.
SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD
COMPANY.

Submitted September 8, 1913. Decided March 2, 1914.

1. Charges collected by defendant for the transportation of 11 carloads of cattle from Nephi, Utah, to Los Angeles, Cal., found to have been in accordance with published tariffs and not shown to have been unreasonable.
2. Defendant's tariff, which names carload rates on cattle dependent upon the number of cars shipped, held to be unlawful.

Isidore B. Dockweiler for complainant.

A. S. Halsted for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation with offices at Los Angeles, Cal. By complaint, filed April 7, 1913, it alleges that unreasonable charges were collected by defendant for the transportation of 11 carloads of cattle from Nephi, Utah, to Los Angeles. Reparation is asked.

Seven of the carloads described in the complaint were forwarded from Nephi on February 11 and the other four on February 12, 1913. At the time defendant maintained four specific rates for the transportation of cattle in carloads from and to the points in question. One rate was \$133 per standard 36-foot car and applied to shipments of less than 8 carloads; another was \$118 per standard 36-foot car and applied to shipments of 8 to 14 cars; another was \$106 per standard 36-foot car and applied to shipments of 15 to 19 cars; and another was \$99 per standard 36-foot car and applied to shipments of 20 cars or more. Each of these rates was subject to certain restrictions named in the tariff, not necessary to be here detailed. A tariff effective August 25, 1913, which canceled the issue naming the rates in effect at the time of the shipments here involved, provides two specific rates on cattle, namely, \$133 per car on shipments of less than 20 cars and \$99 per car on lots of 20 or more cars. The other items, which named rates on 8 and 15 car lots no longer apply to shipments from Nephi, but similar rates on car lots are still maintained from various other points.

There is no allegation in the complaint that the rate for less than 8 cars was unreasonable or otherwise in violation of the act. At the hearing it was stated in behalf of complainant that no claim is made that any of the rates on cattle from Nephi to Los Angeles are unreasonable. Complainant's claim for reparation is based upon the fact that 11 cars were ordered of defendant prior to the shipment; that in the order the date was named on which complainant desired to load and ship the cattle; that defendant was unable to furnish more than 7 cars on the day named in the order; that complainant loaded the 7 cars and sent them forward on the day they were furnished; and that the other 4 cars were furnished and shipped on the next day. The rate of \$133 was charged on each carload, and it is alleged by complainant that this rate was, under the circumstances described, unlawful to the extent that it exceeded the rate of \$118 on shipments of 8 cars or more.

This case presents indirectly the validity of an 8-car rate lower than the rate for shipments of from 1 to 7 cars. In repeated decisions the Commission has held that the mere fact that certain traffic is hauled in trainload lots can not be made the basis of rates different from those applied to shipments in single carloads. *Rickards v. A. O. L. R. R. Co.*, 23 I. C. C., 239; *Anaconda Copper Mining Co. v. C. & E. R. R. Co.*, 19 I. C. C., 592; and *Carstens Packing Co. v. O. S. L. R. R. Co.*, 17 I. C. C., 324. In *Planters Compress Co. v. C. C. C. & St. L. Ry. Co.*, 11 I. C. C., 382, we said, at page 402:

Something akin to this principle was decided by the Commission during the first year of its existence. This was a case where a carrier allowed a discount from its coal rates to consignees receiving not less than 30,000 tons a year. This was held to be unlawful on the ground that it was a condition which most shippers could not meet, and Judge Cooley in that case, speaking of the carriers' offer of a lower rate on 30,000 tons yearly shipments, said that "a discrimination which should so limit the offer that a part of those who could and might desire to accept it would be excluded from its benefits, would for that very reason be unjust and indefensible." *Providence Coal Co. v. Providence & W. R. Co.*, 1 I. C. C., 107.

It is upon the same theory that a lower rate for a trainload than for a carload is regarded as unlawful; because it is in effect allowing lower rates upon a condition which only a few shippers can comply with and consequently is an injustice to those unable to ship the required quantity.

Upon the evidence in this case the Commission may not properly award the reparation sought by complainant. The rate charged was in accordance with defendant's published tariff. To make the order here asked would be a recognition of the principle that defendant may lawfully make its rates dependent upon the number of cars shipped. The Commission has approved carload rates which are less per 100 pounds than the less-than-carload rate on the same commodity, but has never extended the principle so as to justify trainload

or wholesale rates of any character. *Carstens Packing Co. v. O. S. L. R. R. Co., supra.*

The tariff in effect when these shipments were made, as above stated, named four rates from Nephi to Los Angeles on cattle, dependent upon whether they were shipped in 1, 8, 15, or 20 car lots. The current tariff contains single carload rates and lower rates for 20 or more cars. In our opinion, provisions of this kind are unlawful. Defendant will be expected to eliminate them from its tariffs and to establish in lieu thereof carload rates applicable to any number of cars. There is no basis of record for determining the amount of such rates, but it does not follow, as a matter of course, that they should be as high as the present rates for single car lots. If this is not done within 90 days from the date hereof, the Commission will take such further steps as may be appropriate to give force to the views herein expressed. The case will be held open for the purpose of such further proceedings with respect to the correction of defendant's tariffs as may be necessary.

29 I. C. C.

No. 5848.

C. S. BRACKETT COMPANY

v.

GREAT NORTHERN EXPRESS COMPANY.

Submitted November 17, 1913. Decided March 2, 1914.

Express package with destination and routing marked thereon by shipper was offered for transportation with receipt already made out by shipper showing different but correct routing. The receipt was signed and returned to the shipper without observing the discrepancy, and the carrier transported the package in accordance with the routing marked on the latter; *Held*. That the carrier was not responsible for charges incurred in transporting the shipment in accordance with the routing marked on the package.

S. K. Skogness for complainant.

Sanford H. E. Freund for defendant.

REPORT OF THE COMMISSION.

By THE COMMISSION:

Complainant is a corporation engaged in business at Minneapolis, Minn. By complaint, filed June 7, 1913, it attacks as unjust and unreasonable the charges collected by defendant for the transportation of a shipment of liquor in glass from Minneapolis to Edinburg, N. Dak., and return. Reparation is sought.

On December 6, 1911, complainant delivered to defendant at Minneapolis, for transportation over its lines, a wooden box containing liquor in glass and marked: "James Sterlangson, Svold, via Edinburg, N. D." A receipt for the box was signed by defendant's agent and returned to complainant. In the receipt, which was made out by complainant, the consignee and destination were given as follows: "J. Sturlangson, Svald via Cavalier, N. D." Edinburg is on a branch of the Great Northern Railway extending north from Larimore, N. Dak., and Cavalier is on another branch extending north from Grand Forks, N. Dak., via Grafton, N. Dak. Svold is a cross-country point situated between the two branch lines, considerably nearer to Cavalier than to Edinburg.

The defendant carried the shipment to Edinburg in accordance with the instructions marked on the box. It was unable to effect delivery to the consignee at that point, and on request by complainant the shipment was returned to Minneapolis. Transportation charges in the sum of \$2.20, or \$1.10 each way, at the published rate, were collected.

Complainant contends that the instructions contained in the receipt should have been followed, and the marking on the box disregarded by the carrier; and its attack upon the charges collected is based solely on this contention. Both Cavalier and Edinburg are reached by defendant's lines.

The Commission has recently held informally that when a shipper prepares a bill of lading providing for the carriage of property to a particular destination and marks a different and erroneous address on the package the carrier will not be held responsible for the freight charges incurred in transporting the property to the destination shown on the package, although the correct destination is shown on the bill of lading. We think the present case is clearly within this principle. In view thereof we do not find that in following the instructions marked on the package the defendant was guilty of misrouting. See also *Parlin & Orendorff Plow Co. v. United States Express Co.*, 26 I. C. C. 561; and *American Agricultural Chemical Co. v. B. & A. R. R. Co.*, 28 I. C. C., 398.

We are accordingly of opinion and find that any damages that complainant may have suffered were due to its own act in improperly marking the package, and are not justly chargeable to misrouting or other improper conduct by defendant. It follows that the complaint must be dismissed, and an order will be entered accordingly.

No. 5830.

WICHITA BUSINESS ASSOCIATION

v.

KANSAS CITY, MEXICO & ORIENT RAILWAY COMPANY
ET AL.

Submitted January 2, 1914. Decided March 2, 1914.

Rates on live stock in carloads from points on lines of defendants in Texas and Oklahoma via Altus, Okla., to Wichita, Kans., found unreasonable. Reasonable joint rates prescribed for the future.

Martin E. Casto for complainant.

C. L. Fontaine for Wichita Falls & Northwestern Railway Company, Wichita Falls & Northwestern Railway Company of Texas, Wichita Falls & Southern Railway Company, and Wichita Falls & Wellington Railway Company of Texas.

Chester I. Long for receivers of the Kansas City, Mexico & Orient Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Wichita Business Association is a voluntary organization for the purpose of advancing the commerce, industry, and public interests of the city of Wichita, Kans. Its complaint here asks that defendants be required to establish certain joint rates on live stock in carloads to Wichita from points in Texas and Oklahoma via the lines of the Wichita Falls & Northwestern Railway Company, the Wichita Falls & Northwestern Railway Company of Texas, the Wichita Falls & Southern Railway Company, and the Wichita Falls & Wellington Railway Company of Texas (all hereinafter collectively referred to as the Wichita Falls route) to Altus, Okla., and the line of the Kansas City, Mexico & Orient Railway Company (hereinafter called the Orient) beyond.

What is really sought here is the reestablishment of the joint rates published by defendant carriers in accordance with the decision in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160. The rates from these points of origin to Wichita were made effective not only via the lines of the Wichita Falls route and the Orient, but also via the Wichita Falls route to Woodward, Okla., thence via the Atchison, Topeka & Santa Fe to Wichita; to Elk City, Okla., and Mangum, Okla., thence via the Chicago, Rock Island & Pacific to Wichita; and to Altus, or Frederick, Okla., thence via the St. Louis & San Francisco to Wichita.

The rates via the Atchison, Topeka & Santa Fe, Chicago, Rock Island & Pacific, and St. Louis & San Francisco routes have been continuously in effect to the present time. A dispute arose between the Wichita Falls route and the Orient over the divisions of the rates via Altus, as a result of which the joint rates to Wichita were canceled via their lines, those from Texas points on May 30, 1912, and those from Oklahoma points on March 24, 1913.

Upon hearing it was admitted by defendants that the joint rates asked for by complainant are reasonable. It was also admitted that the cancellation of such rates was due to the failure of defendants to agree upon divisions. The record before us indicates that the route via Altus and the Orient is a highly desirable one, so much so that since the joint rates were canceled shippers have frequently paid the combinations of intermediate rates via that route rather than ship over competitive routes via which the lower joint rates are applicable. It is stated in evidence that the through rates, made up of the combinations of intermediate rates, are from \$4 to \$11 per car higher than the joint through rates previously in effect. The record contains much testimony with respect to the dispute over divisions, and the Orient asks the Commission in this proceeding to determine the controversy. The Wichita Falls route, however, objects to such a disposition of the controversy, and insists that the question of divisions is not properly before the Commission in this proceeding. We are of opinion that the contention of the Wichita Falls route is well founded. Complainant has no interest in the question of divisions, and we have no evidence in the record upon which to determine the amount that each of the defendants is entitled to out of the joint rate. If the joint rates which were formerly in effect are restored and the carriers then can not agree upon the divisions thereof, they may present that question to the Commission in the manner prescribed in the act.

In view of the evidence of record we are of opinion, and find, that the application by defendants of existing combinations of intermediate rates for the transportation of live stock in carloads from points on their lines in Texas and Oklahoma to Wichita, via Altus, is unreasonable. We are further of the opinion that an order should be entered requiring defendants to reestablish the joint rates on live stock in carloads from points on their lines in Texas and Oklahoma to Wichita, via Altus, which were published as a result of the Commission's decision in *Investigation of Alleged Unreasonable Rates on Meats, supra*, and canceled by them as above stated.

We may remark that the action of defendants in canceling these rates, which had been found reasonable, merely because of a dispute over divisions, was unwarranted.

No. 5558.

HUGHES CREEK COAL COMPANY ET AL

v.

KANAWHA & MICHIGAN RAILWAY COMPANY ET AL

No. 5558 (Sub-No. 1.)

KELLY'S CREEK COLLIERY COMPANY ET AL

v.

SAME.

Submitted October 17, 1913. Decided March 9, 1914.

1. Complainants' request for through routes and joint rates between stations on the Kanawha & Michigan Railway and its branches and the points specified in the complaint in eastern and southeastern territory on the lines of the Chesapeake & Ohio and its connections should be granted. As reasonable rates for these routes defendants should apply rates not in excess of those now applying to these destinations for shipments from the mines on the Chesapeake & Ohio. The factor of the two-line haul in the routes sought by complainants is negligible, since the switching connection between the Kanawha & Michigan and the Chesapeake & Ohio is simple, and the average haul to destination is more than 500 miles. *Sheridan Chamber of Commerce v. C., B. & O. R. R. Co.*, 26 I. C. C., 638, 647-649; *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, 661. The policy of the Chesapeake & Ohio to restrict the movement of coal on its line solely to coal originating on its own line held not to be justified.
2. Complainants' request for a through route and joint rate to the Cincinnati switching territory over the Kanawha & Michigan and the Chesapeake & Ohio and its connections should not be granted. Such a route would give the Kanawha & Michigan a short haul of very much less than the entire length of its line.
3. The fact that the defendants have established through routes and joint rates from Chesapeake & Ohio mines to Kanawha & Michigan destinations while refusing complainants the through routes and joint rates sought does not constitute unlawful discrimination when viewed in the light of the principles applied in *Coke Producers' Asso. of Connellsville Region v. B. & O. R. R. Co.*, 27 I. C. C., 125, and the cases there cited, which hold a test of discrimination to be the ability of one of the carriers participating in the two through routes to put an end to the discrimination by its own act.
4. The charge that since the Chesapeake & Ohio and the Kanawha & Michigan are practically one road it is unjustly discriminatory for them to deny the Kanawha & Michigan mines access to markets which have been made

available for Chesapeake & Ohio mines held not to be established. For the purposes in question no such identity between the two roads as complainants assert has been proven.

Buckner Clay for complainants.

Leroy Albach, W. N. King, and D. P. Connell for Kanawha & Michigan Railway Company.

W. S. Bronson for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainants in these cases are six coal companies in the Kanawha district of West Virginia, located on or adjacent to the main line and branches of the Kanawha & Michigan Railway.

The substance of the complaints is this. The Kanawha coal district is divided by the Kanawha River. On the north side of the river is the Kanawha & Michigan; on the south side, paralleling it for a distance of about 50 miles, between Gauley, W. Va., and St. Albans, W. Va., is the Chesapeake & Ohio. The coal field along the river extends back into the mountains on both the north and south sides and is reached by the branch lines connected with the one or the other of these two railways. The coal on both sides of the river is practically of the same quality, is used for the same purposes, competes to some extent in the same market, and brings substantially the same price. To compete on a basis of equality, it is necessary that the cost of transportation from mines on both sides of the river should be the same, since coal is sold on a small margin of profit. At present the coal from the mines on the Kanawha & Michigan has competitive rates—that is, rates which permit it to meet the competition from other fields—only to certain territory in the northwest where the competition is very strong. In Cincinnati it has a competitive rate only by one connection of the Kanawha & Michigan, the Baltimore & Ohio Southwestern, with a resulting limited number of deliveries. The coal from the Chesapeake & Ohio mines on the other hand has not only an extensive market in the northwest, including all deliveries in Cincinnati, but also competitive rates to the Atlantic coast and to markets in the east and southeast. In the foregoing and in the following portion of the report it should be understood that when rates from the mines are spoken of what is meant is rates from the stations on the main line or branches of the defendant railroads from which the mines ship their coal.

Complainants accordingly are seeking the establishing of through routes and joint rates which will put them on an equality with the Chesapeake & Ohio mines in their ability to reach markets. The complaint in one case, that of the Hughes Creek Coal Company, asks the establishing by the Kanawha & Michigan and the Ches-

peake & Ohio and its connections of a through route to what is known as the Cincinnati switching territory, with a joint rate which shall be the same as that now enjoyed by the mines on the Chesapeake & Ohio and its connections, namely, a rate of \$1 for all deliveries in the Cincinnati district. In the second, the Kelly's Creek Colliery Company case, the complaint asks for the establishing of through routes between stations on the Kanawha & Michigan and its branches and various points specified in the complaint on the Chesapeake & Ohio, the Seaboard Air Line, the Southern Railway, the Atlantic Coast Line, and the Norfolk Southern Railway. The joint rates asked are the same rates applying to these points of destination for shipments from the mines on the Chesapeake & Ohio.

The complainants contend in a general allegation that the denial of the rates sought by them and the alleged present inequality between the rates enjoyed by the mines on the Chesapeake & Ohio as compared with those available to the Kanawha & Michigan mines are the result of the circumstance that the Chesapeake & Ohio has such a control of the Kanawha & Michigan that the two roads are in effect one system, and that the Kanawha & Michigan is operated more in the interest of the Chesapeake & Ohio than in the interest of its own shippers. As evidence of this identity reference is made to the annual report of the Kanawha & Michigan for the year 1912 to this Commission, which shows that eight-ninths of its stock is owned by the Chesapeake & Ohio and the Lake Shore & Michigan Southern Railway, the Chesapeake & Ohio owning 40,265 and the Lake Shore & Michigan Southern 40,271 out of its total capitalization of 90,000 shares. Reference is made also to the case of *United States v. L. S. & M. S. Ry. Co.*, 203 Fed., 295, where the court found that an agreement had been entered into in March, 1910, between the Chesapeake & Ohio and the Lake Shore & Michigan Southern, which provided, among other things, that these two roads should acquire the stock of the Hocking Valley and the Toledo & Ohio Central, the western connections of the Kanawha & Michigan, and that the traffic of the Kanawha & Michigan should be equally distributed between the two connections. Complainants refer to another term of the agreement of which the intent was in the language of the court—

that the lines of the Kanawha & Michigan could be used to the fullest extent by either of the purchasing companies in building up its interest either in local territory on the Kanawha & Michigan or in making through routes and connections beyond it, protecting, however, all the stockholders of that company.

It is contended that the foregoing clearly shows an ownership and control of the Kanawha & Michigan by the Lake Shore & Michigan Southern and the Chesapeake & Ohio, and that for the present purposes this is equivalent to a separate control by the Chesapeake &

Ohio. In addition, complainants cite, as evidence of an actual exercise of control over the Kanawha & Michigan by the Chesapeake & Ohio, figures of the movement over the Kanawha & Michigan of coal tonnage originating on the Chesapeake & Ohio. As part of complainants' contentions, which will be later noticed, that the existing situation constitutes discrimination against them, it appears that while the Chesapeake & Ohio and the Kanawha & Michigan have refused the through routes and joint rates requested for shipments from Kanawha & Michigan mines, they have established through routes and joint rates for shipments from Chesapeake & Ohio mines to the western destinations reached by the Kanawha & Michigan and its connections. The defendants contend that the asserted control by the Chesapeake & Ohio of the Kanawha & Michigan has nothing to do with this fact, since the rates existed for a long time prior to the agreement of March, 1910. Complainants, however, introduced in rebuttal statistics of the tonnage of the Chesapeake & Ohio moving over the Kanawha & Michigan under these rates, which show in general that this tonnage increased from nothing in the year ending June 30, 1909—that is, before the date of the agreement—to over a million tons in the year 1912, and that accompanying this increase in the Chesapeake & Ohio tonnage during the period in question there was a corresponding decrease in the tonnage originating on the Kanawha & Michigan's own line. This, it is argued, can be explained only by domination of the Kanawha & Michigan by the Chesapeake & Ohio.

Complainants' request for through routes and joint rates east—that is, to points on the Atlantic coast and in eastern and southeastern territory—may be considered first. In the discussion at the hearing the rate from Chesapeake & Ohio mines to Richmond and the Virginia cities was taken as an example of the rates desired by complainants. The Chesapeake & Ohio's through rate for this movement is \$1.60 a ton. To reach these destinations, complainants, the mines on the Kanawha & Michigan, now nominally have a through route. In general the rate applicable is a combination of the Kanawha & Michigan's local rate of 40 cents from the mines to Gauley, its eastern junction with the Chesapeake & Ohio, and the Chesapeake & Ohio's local of \$1.50 from Gauley beyond. The combination rate of \$1.90, or 30 cents in excess of the through rate from the Chesapeake & Ohio mines, is prohibitive, and therefore, as a practical matter there is no open through route for Kanawha & Michigan shipments to the territory in question.

The defense by the Kanawha & Michigan of the refusal of the \$1.60 joint rate is that since the Chesapeake & Ohio refuses to take less than its local of \$1.50 for the haul from Gauley beyond, a position which

the Kanawha & Michigan in general justifies, the establishing of the \$1.60 rate is impossible, since there would be left to the Kanawha & Michigan only 10 cents to cover both the charge for assembling the coal on its line and also for hauling it from the mines to Gauley, which in some instances would mean a distance of 35 miles. This, it says, is obviously inadequate, since the Commission found in *In the Matter of Advances in Coal Rates*, 22 I. C. C., 604, that for the similar movement of Kanawha & Michigan coal to western territory the assembling cost alone amounted to 10 cents. It alleges that it could not haul the coal to Gauley for less than its local of 40 cents, and that this is reasonable as a proportion of the through rate, considering that the haul would be opposed to the great movement of its coal west and would be necessarily expensive, and also that it would be at an extra expense occasioned by the switching movement at Gauley bridge necessary to transfer the coal to the Chesapeake & Ohio. There is the further objection that on this short haul the Kanawha & Michigan would be furnishing cars which would be off its line for long periods to the prejudice of the shippers interested in the large tonnage of coal moving to the west.

As just indicated, the Chesapeake & Ohio contends that it can not afford to make the haul from Gauley beyond for less than its local of \$1.50. This rate is claimed to be an abnormally low one, first, because, like all Chesapeake & Ohio coal rates, it has been forced down by the necessity of meeting the competition from coal fields served by other lines north and south of it more advantageously situated in their ability to reach the markets. It is also argued that while this rate of \$1.50 may be used as a combination rate for shipments from the Kanawha field, it is a New River district group rate, and since Gauley is on the extreme western edge of the group—that is, farthest from points of destination—it is too low a rate for the movement in question from the Kanawha field. A further argument is based on an analysis of the \$1.60 through rate from the Chesapeake & Ohio mines. It is contended that the assembling cost of the coal on the Chesapeake & Ohio line and its branches is 15 cents. This leaves remaining out of the through rate \$1.45, which is divided according to the respective mileages into 11 cents for the haul from the mines to Gauley and \$1.34 for the haul from Gauley beyond. Each of these figures, the 11 cents or the \$1.34, is asserted to be too low for the separate haul and is sufficient for the Chesapeake & Ohio only when it is taken in connection with the other. It is argued, further, that obviously the 11 cents would be too low a rate for a separate short haul by the Kanawha & Michigan from its mines to Gauley.

In answer to these various contentions it may be remarked, first, that discussing the Chesapeake & Ohio's rate from Gauley as a local

New River district rate would seem to be misleading. The Commission here is concerned only with rates from the Kanawha district, and in considering what is a reasonable rate for a movement from this district can not be expected to take into account the considerations, including that of the averaging of revenues, which enter into the rates from this other district. To keep the problem free from confusion it would seem to be necessary to confine attention to the consideration of the rates in question as Kanawha district rates.

Respecting the analysis of the \$1.60 rate and the arguments based thereon, it is to be observed that the division appears to be one open to considerable question. The fixing of 15 cents as the Chesapeake & Ohio assembling cost, avowedly upon the result of this Commission's findings in *In the Matter of Advances in Coal Rates, supra*, seems not to be justified by the conclusions in that case. Taking 15 cents as the assembling cost counsel for the Chesapeake & Ohio assumes that 11 cents would be the proportion to go to the Kanawha & Michigan under his analysis of the \$1.60 rate. This figure is obviously incorrect in view of the additional fact that the assembling cost on the Kanawha & Michigan is fixed by counsel for that road, referring to the Commission's conclusions in *In the Matter of Advances in Coal Rates, supra*, at 10 cents rather than 15 cents. This difference in the assembling costs would, of course, make a difference in the amount left for the haul from the mines to Gauley.

The defense by the Chesapeake & Ohio lays considerable emphasis on the asserted policy of that road not to pro rate and divide its through rates on coal with any other independent road in the Kanawha and New River districts. This policy is said to rest on the fact that the Chesapeake & Ohio coal rates are so low that it can not afford to divide them with any other road, and it is contended, moreover, that the policy has received the sanction of this Commission in the cases of *Loup Creek Colliery Co. v. V. Ry. Co.*, 12 I. C. C., 471, and *North Fork Cannel Coal Co. v. A. A. R. R. Co.*, 25 I. C. C., 241. We do not understand that these cases, considered apart from their special facts upon which the findings were based, contain any such general approbation of the policy in question. This policy in essence seems to be one of endeavor to keep the movement of coal on the line of the Chesapeake & Ohio confined solely to coal originating entirely on its own line so that the road's revenue may be as large as possible. Its consequence is, of course, as contended by complainants, to shut neighboring mines out of markets reached by the Chesapeake & Ohio and its connections and therefore to monopolize these markets so far as the Kanawha district is concerned for the Chesapeake & Ohio coal. Such an effort in the cases of other roads in other places this Commission has on a number of occasions condemned. In *Lumber*

Rates from Texas, Louisiana, and Arkansas to Oklahoma and Missouri, 28 I. C. C., 471, 474, we held:

As a matter of sound policy under the law, a carrier is not justified in attempting to restrict its traffic to movement between points on its own line.

In *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C., 460, 467, we said:

It may be laid down as a general rule admitting of no qualification that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the service has the right to have it moved and to have reasonable rates established for the movement, regardless of the fact that the revenues of the carrier may be reduced by reason of his competition with other shippers in the distant markets; and under all ordinary conditions he has the right also to have the benefit of through routes and reasonable joint rates to such distant markets * * *.

In this case, it may be remarked, the defense in part was the same as in the present one, namely, that the carrier had a right to confine the movement to hauls from points on its own line and not share the revenue from the traffic with any other line. The same thought is expressed in *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 17 I. C. C., 479, and in *Rates from Walsenburg Coal Field*, 26 I. C. C., 85.

Putting the matter affirmatively, we are of opinion that the defendants may properly be expected to remove the bar found in the present prohibitive rates and to open the gateway at Gauley with available through routes to the eastern and southeastern markets under reasonable joint through rates. Recurring to the former discussion, is the present through rate from the Chesapeake & Ohio mines a reasonable joint rate for the movement from the Kanawha & Michigan mines over the through route composed of the Kanawha & Michigan and the Chesapeake & Ohio? Giving due consideration to the fact that the Chesapeake & Ohio rates appear to be somewhat low, we are still of opinion that they would be reasonable for the movement over the through route. This conclusion we rest in general on a comparison of the conditions of the two movements, namely, that over the Chesapeake & Ohio alone and that over the Kanawha & Michigan and the Chesapeake & Ohio together. It is testified that as to the matter of the length of haul from mines to Gauley, the advantage lies with the Kanawha & Michigan. Its main line in the district is 60 miles in length, as compared with 80 miles in the case of the main line of the Chesapeake & Ohio. It has only three branches, the longest of which is 5 miles, while the seven branches of the Chesapeake & Ohio range from 3 to 70 miles in length. All except three mines on the Kanawha & Michigan are located east of Charleston, which is only 35 miles from Gauley. Ninety per cent of

29 I. C. C.

the Chesapeake & Ohio coal comes from its branches, from the longest of which the haul to Gauley would amount to 150 miles. It is testified, however, on behalf of the Chesapeake & Ohio, that the average haul from its mines to Gauley is 32 miles. While there is in the record no satisfactory average distance in the case of the Kanawha & Michigan mines, it is obvious from the general situation of the two roads described above that its average haul to Gauley must be considerably less than that on the Chesapeake & Ohio. It is to be regretted that weighted averages are not given in either case.

It is also testified that the cost of operation is greater on the Chesapeake & Ohio than on the Kanawha & Michigan. As just indicated, a very large percentage of the Chesapeake & Ohio coal comes from its branches. These branches run up into the mountains, where construction and maintenance are expensive and where the operating cost is large on account of the heavy grades. On the other hand, most of the coal on the Kanawha & Michigan comes from its main line, where operating conditions are much more advantageous.

The foregoing comparison omits the factor on the other side, that the movement would involve a two rather than a one line haul, and consequently would ordinarily justify a higher total charge. This contention as applied to the present case is answered by the discussion in *Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co.*, 26 I. C. C., 638, at pages 647 and 649. Referring there, among others, to the case of *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, 661, we held that where the physical connection between connecting carriers is simple, involving no expensive terminal service, the additional cost due to the switching movement is very small, and may not properly be made the basis of an additional charge for a two-line haul of substantial length. In the case last mentioned we held that when distances of over 500 miles were involved the fact that the service is by two lines is largely negligible. It appears in the instant case that the average haul to the eastern destinations named in the complaint would be over 500 miles. It is testified, moreover, that while for the transfer between the Kanawha & Michigan and the Chesapeake & Ohio at Gauley Bridge one slight additional switching movement would be required over that in the case of a switching movement from a branch line of the Chesapeake & Ohio to its own main line, the expense of both movements is about the same; that is, it is not more expensive for the Chesapeake & Ohio to switch from its own branches to its main line than it would be for the Kanawha & Michigan to switch to the Chesapeake & Ohio. We find, therefore, that in view of the circumstances just mentioned the factor of the two-line haul is here negligible, and that the rates now applying for the movement from the Chesapeake & Ohio mines would be reasonable rates for the through routes we have

directed should be opened. The carriers consequently will be expected to apply to these routes rates not in excess of the Chesapeake & Ohio rates.

Passing to the rate west—that is, the rate to the Cincinnati switching district—it may be observed that the defense is principally assumed by the Kanawha & Michigan. It alleges at the outset that it has a reasonable rate for shipments to these destinations, namely, a rate of \$1.35 via the Pittsburgh, Cincinnati, Chicago & St. Louis and the Cleveland, Cincinnati, Chicago & St. Louis, which includes the cost of switching to any delivery in the Cincinnati district. As to its \$1 rate via the Baltimore & Ohio Southwestern, it points out that this rate includes deliveries embracing 120 firms and 16 team tracks, some of which firms are large consumers of coal. It was testified that this rate has been little used by complainants, although it had been in for about a year prior to the hearing. Defendants argue that if complainants' coal can be sold in Cincinnati there is no reason why it should not be sold to the industries included under the \$1 rate, and that the reason why this rate has not been used is that complainants already sell from one-fourth to one-third of their coal to owners of barges, who ship the coal to Cincinnati by river.

However this may be, we are of opinion that the further defense urged by the Kanawha & Michigan is a substantial one. It refers to that portion of section 15 conferring the jurisdiction for the establishing of through routes and joint rates, which provides—

and in establishing such through route the Commission shall not require any company, without its consent, to embrace in such route substantially less than the length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed route, unless to do so would make such through route unreasonably long as compared with another practical route which could otherwise be established.

The through route sought by complainants over the Kanawha & Michigan and the Chesapeake & Ohio would give the latter road only a short haul to Charleston of about 35 miles. Moreover, a comparison of the Kanawha & Michigan's existing through route over the Baltimore & Ohio Southwestern, including the entire length of its road and covering a total of 289 miles, with the 241-mile route sought over the Kanawha & Michigan and the Chesapeake & Ohio does not show that the existing route is unreasonably long. We believe, therefore, that we should not be justified in decreeing the establishing of the desired route with its resulting short haul for the Kanawha & Michigan.

Complainants contend that the quoted proviso of section 15 can not be invoked as a defense to a discrimination. However this may be as a matter of law, we are of opinion that undue discrimination is

not proven in the present case. The fact that the two principal defendants have established through routes and joint rates from Chesapeake & Ohio mines to Kanawha & Michigan destinations, while refusing complainants the through routes sought, does not constitute unlawful discrimination under section 3 of the act when viewed in the light of the principles applied in the case of *Coke Producers' Asso. of Connellsville Region v. B. & O. R. R. Co.*, 27 I. C. C., 125, and the cases there cited. The test of discrimination defined in these cases is the ability of one of the carriers participating in the two through routes to put an end to the discrimination by its own act. It is testified here that the Chesapeake & Ohio mines have the same joint rates to the Kanawha & Michigan destinations in question by a number of lines other than the Kanawha & Michigan, and that consequently if the Kanawha & Michigan were to withdraw its participation in the joint rates in question substantially the same advantage would be enjoyed by the Chesapeake & Ohio operators. Under the circumstances, therefore, the Kanawha & Michigan has no such control of the situation as would justify a holding that it is guilty of undue discrimination by participation in the rates. On the other hand, it can not be said that the Chesapeake & Ohio is under such a duty to complainants, located on the line of another road, that its creation of through routes for the benefit of its own mines, while refusing to join in through routes for the benefit of complainants, amounts to discrimination against them unlawful under section 3.

Neither do we believe that complainants' other general charge of discrimination is established. This charge is that, since the two roads are practically one, it is unjustly discriminatory for them to deny the Kanawha & Michigan mines access to markets which have been made available for Chesapeake & Ohio mines. This conclusion we rest on the finding that for the purposes in question such an identity between the two roads as complainants assert is not proven. The following observations on this point, it may be remarked, apply also to complainants' related contention that the provision of section 15, quoted above, is not applicable here since the Chesapeake & Ohio and the Kanawha & Michigan are one system. As opposed to the evidence of identity adduced by complainants summarized at the beginning of this report, it is testified by the officials of the defendant roads that the relation between the roads, based on the admitted stock ownership, has played no part in their respective administrations of the two properties, and that they, the officials in question, have never received any instructions from their superiors based upon this relation in ownership. It is pointed out, moreover, that an examination of the board of directors reveals the fact that three are connected with the New York Central lines, two with the Chesapeake & Ohio,

and the other four are neutral, being business men and bankers, and that consequently it can not be argued that the road is controlled by the Chesapeake & Ohio, which has but two men upon the board of directors out of a total of nine. Apart from the matter of the weight of this conflicting evidence, we are of opinion in general that the inequalities complained of might just as naturally have resulted with the two roads quite separate in fact as under a common management, and that they may just as plausibly be rested upon the considerations urged as defense by the carriers in the present proceeding—and this irrespective of the validity of the defense—as upon the fact of common management. To summarize, we are of opinion that none of the charges of unlawful discrimination has been established.

It remains to notice one other matter raised by certain allegations in the complaint to the effect that the complainants have suffered in the past from a scarcity of cars and that if the through routes to eastern destinations were established their condition would be improved in the following manner. Because of the establishing of a through route by the Chesapeake & Ohio and the Kanawha & Michigan from the mines on the former road to destinations on the latter, considerable tonnage originating on the Chesapeake & Ohio goes west by way of the Kanawha & Michigan and consequently much of the Chesapeake & Ohio empty coal equipment passes by the complainants' mines on its return journey over the Kanawha & Michigan to points east. Accordingly if the through routes east were established, this empty equipment might be used by complainants. Defendants contest the propriety of such a practice and assert that they would not permit it. In their briefs complainants observe that they have raised this question of car supply in an independent proceeding, *Kelley's Creek Colliery Co. v. K. & M. Ry. Co.*, Docket No. 5841, which is still pending, argue that this question is not a necessary part of their present case, and seem to be content to have it determined in the independent proceeding mentioned. We are of opinion that this question is not necessarily involved here and under the circumstances shall leave it for consideration in the other proceeding.

Our conclusions are that while complainants' petition respecting the through route and joint rate to the Cincinnati district should not be granted, the defendants should be required to establish the desired through routes between stations on the Kanawha & Michigan and its branches, and the points specified in the complaint in the east and the southeast, and to apply to these through routes rates not in excess of those now applying to these points of destination for shipments from the mines on the Chesapeake & Ohio.

Orders in accordance with these conclusions will be entered.

No. 5572.
CAMPBELL'S CREEK COAL COMPANY
v.
ANN ARBOR RAILROAD COMPANY ET AL.

No. 5651.
H. C. DICKINSON ET AL.
v.
ANN ARBOR RAILROAD COMPANY ET AL.

No. 5584.
CAMPBELL'S CREEK RAILROAD COMPANY
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted October 24, 1913. Decided March 9, 1914.

1. Defendants' application of the main-line rates to points on the Kanawha & West Virginia and the Coal & Coke railroads while denying them to complainants constitutes undue and unreasonable prejudice and disadvantage to complainants, which should be corrected either by canceling the main-line rates to points on the lines mentioned or by establishing the main-line rates as joint rates with the Campbell's Creek Railroad.
2. No such undue prejudice may be predicated upon the application of the main-line rates to points on branches of the defendant Kanawha & Michigan Railroad.
3. The portion of section 1 which makes it the duty of every carrier subject to the act to furnish cars must be read into that portion of section 1 which deals with the matter of switching connections between common carriers and lateral branch lines. *Huerfano Coal Co. v. C. & S. E. R. R. Co.*, 28 I. C. C., 502.
4. Defendants' contention that it would be impossible to hold the Campbell's Creek Railroad a common carrier without finding it guilty of a violation of the commodities clause, assuming defendants' construction of the law is correct, is not sustained by the facts.

F. B. James and E. E. Williamson for complainants.

Leroy Allebach and W. N. King for Kanawha & Michigan Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainants in the above-entitled cases, which were heard together, are as follows: The Campbell's Creek Coal Company, which

operates mines at Putney, W. Va.; the Campbell's Creek Railroad Company, a line some 13 miles long, running from Putney to Dana, W. Va., a point 5 miles south of Charleston on the main line of the Kanawha & Michigan Railway Company; and H. C. Dickinson and D. G. Courtney, who own and control bituminous coal-bearing lands adjacent to the line of the Campbell's Creek Railroad Company. At the hearing a petition of intervention was filed by the Perryville Coal & Mining Company; which has recently opened a mine adjacent to the Campbell's Creek Railroad about 6 miles from Dana. This petition contains substantially the same allegations and asks for the same relief as that of the Campbell's Creek Coal Company. The principal defendant in interest is the Kanawha & Michigan Railway Company, which is the outlet for the Campbell's Creek Railroad and its shippers.

The substance of the petitions of the various complainants considered together is as follows: The Campbell's Creek Railroad is a common carrier engaged in interstate commerce. The railroad is entirely separate from the Campbell's Creek Coal Company. Neither company owns the stocks or bonds of the other, and they are managed and operated separately. The road is distinct from the plant facilities, namely, the mine cars and locomotives and the tracks ramifying through the mines and leading to the tipples of the coal company, all of which are owned by the Campbell's Creek Coal Company. Complainants have sought in vain from defendants, the Kanawha & Michigan and its connections, the establishment of through routes and joint rates for shipments of bituminous coal from points on the line of the Campbell's Creek Railroad to the various destinations mentioned in Kanawha & Michigan tariff I. C. C. 31 and supplement 16 thereto. The joint rates sought are those applying from points on the main line and branches of the Kanawha & Michigan Railway and points on the line of the Kanawha & West Virginia Railroad. Because of the refusal of these rates shippers on the Campbell's Creek Railroad are compelled to pay in addition to the main-line or Kanawha district rates, which apply from Dana, the local rate of the Campbell's Creek Railroad to Dana, which is 15 cents per ton.

It is contended, first, that these existing rates—namely, the combination of the main-line rates and the local rate of the Campbell's Creek Railroad—are unjust and unreasonable; second that the action of the Kanawha & Michigan and its codefendants in refusing joint through routes and the main-line or district rates to complainants while granting them to the Kanawha & West Virginia and persons and localities adjacent to its line, constitute undue preference and advantage to the latter and undue prejudice and disadvantage to the former, in violation of section 3 of the act.

Detailed allegations upon which the charge of discrimination as well as the several requests for relief depend may be summarized as follows: The Kanawha & West Virginia, which like the Campbell's Creek Railroad is wholly within the county of Kanawha, W. Va., runs from Blakely, W. Va., to Charleston, W. Va., a distance of about 34 miles. At the latter place it joins the main line of the Kanawha & Michigan. At Blakely are situated mines owned and operated by the Blue Creek Coal & Land Company. This company is closely identified with the Kanawha & West Virginia Railroad. It owns a majority of its stock, it guarantees the principal and interest of its bonds, and the officers, and with one or two exceptions the directors, of the two companies are the same. The Blue Creek Coal & Land Company owns many thousands of acres of bituminous coal-bearing lands adjacent to the Kanawha & West Virginia and has leased some of these lands to other persons, who are operating mines thereon, and holds other portions of these lands on the market for leasing. Bituminous coal of the Campbell's Creek Coal Company's mines and the coal underlying the lands adjacent to the Campbell's Creek Railroad is of the same general quality as that of the Blue Creek Coal & Land Company's mines, and of the lands adjacent to the Kanawha & West Virginia Railroad, and when mined must come in competition with it. In the case of Messrs. Dickinson and Courtney the fact that the rates from points on the Campbell's Creek Railroad are 15 cents in excess of the main line or district rates has prevented the consummation of various negotiations for the leasing and development of lands owned by them. This has incidentally deprived the Campbell's Creek Railroad of the increased tonnage which would necessarily be delivered to it for transportation if these lands were leased and operated.

While complainants' petitions contrasted their situation only with that of the Kanawha & West Virginia and the mines and localities adjacent to it, evidence was introduced in the hearing and argument advanced in the briefs making a similar comparison with the Coal & Coke Railroad and its shippers. The latter is a road between Elkins, W. Va., and Charleston, W. Va., with branches to Sutton, Coalton and other points. At Charleston it connects with the Kanawha & Michigan. With its branches its mileage is about 198 miles, or 22 miles greater than that of the Kanawha & Michigan. It has through routes and joint rates with the Kanawha & Michigan, and the main line or district rates are applied to points on its line and branches at distances from Charleston ranging from 20 miles, in the case of Glendennin, W. Va., to 172 miles in the case of Coalton, W. Va. It is also alleged here, as in the case of the Kanawha & West Virginia, that there is a community of interest between the railroad

and one of its shippers. Reference is made to the annual report of the Coal & Coke road, which shows that this railway has what is, in effect, a perpetual lease of the properties of the Davis Colliery Company, which are operated as and denominated the "coal department of the railway." The interests controlling the Davis Colliery Company and the Coal & Coke Railway Company are said to be the same.

In addition to the petition for through routes and joint rates, namely, the district rates, both the Campbell's Creek Coal Company and the Perryville Coal & Mining Company seek reparation of alleged excessive charges paid by them.

The history of the two principal complainants, the Campbell's Creek Coal Company and the Campbell's Creek Railroad is as follows: The Campbell's Creek Railroad was incorporated about the year 1902. Previous to that time the Campbell's Creek Coal Company had been operating mines on Campbell's Creek close to Dana. The coal so mined was hauled on the coal company's own rails by its own power to the Kanawha River, where it was dumped into barges and floated down the Kanawha and Ohio rivers to Cincinnati. When these mines were worked out the company, after prospecting, decided about the time above mentioned to begin operations at the head of the creek at Putney, some 13 miles from the river, and was necessarily compelled to build a railroad from Putney to get the coal to the river and also to haul whatever coal might be shipped by rail. It appears that the markets available for shipments by the river have proved to be limited, and the company has been endeavoring to reach wider markets by rail shipments over the Kanawha & Michigan and its connections. At that time neither the Campbell's Creek Coal Company nor other coal companies in the district operating in a similar manner received the main-line or Kanawha district rates, but defrayed the expense of getting the coal from the mines to the defendants' rails, and it is urged by the defendants that the mines at Putney were opened with full knowledge of this condition, but with the expectation that their operation would be sufficiently profitable to bear the expense of getting the coal out to the main line. It developed, however, that this expense was greater than was anticipated, and under the 15-cent rate now paid it the Campbell's Creek Railroad is only just about earning expenses. Defendants suggest that the complainants' present appeal to the Commission is an effort to have this burden lifted from the coal company and transferred to the defendants.

As to the intercorporate relations of the two companies, it may be noted that until very recently the coal company owned the railroad. Upon the eve of the filing of the present complaint, however, upon the advice of counsel as to its desirability to strengthen complainants'

contentions, an alleged separation was effected by a pro rata distribution of the stock of the railroad company among the stockholders of the coal company, with the consequence that now, instead of one company owning the other, the two companies are owned by practically the same set of stockholders. During the course of the hearing it appeared that complete separation had not even then been effected, that part of the railroad's tracks were located on the coal company's land, and no rental was paid for the use of the land, and that it was getting water from a tank which belonged to and was otherwise used by the coal company. These formal legal defects have been since corrected by agreements entered into between the companies, but we are impressed by defendants' contention that all this evidences a real identity of interest which still underlies the nominal separation. This conscious effort to metamorphose into strict legal form betrays an inner conviction of unlawful substance. This impression is given strong foundation by the additional fact that the officers of the two companies, just as in the case of the Kanawha & Michigan and the Blue Creek Coal & Land Company, are substantially the same and a majority of both directorates is the same.

As previously indicated, complainants contend that in form and in fact the companies are separate and distinct, and that the Campbell's Creek Railroad is a common carrier, performing public transportation service. On the latter point considerable evidence was introduced as to the character of the road and its equipment, its holding out to carry and the carriage of passengers other than the employees of the coal company and freight other than that furnished by the coal company, its carriage of the United States mails, and its compliance with the act to regulate commerce and the various acts supplemental thereto. Defendants attack some of this evidence, pointing, for example, to the fact that until the advent of the Perryville Coal & Land Company 98 per cent of the tonnage of the road consisted of the coal shipped by the Campbell's Creek Coal Company. They contend in general that the traffic of the road is in substance that supplied by and incident to the business of the coal company, and its service is in essence private transportation.

These questions as to the status of the railroad and the industry and the character of the transportation afforded are difficult to determine under the present record. It should be added in this connection that the general question as to the relation of coal companies and short coal-carrying railroads is under consideration in another proceeding now pending, and that the conclusions here announced must be regarded as subject to modification in case the Commission on the broader record is compelled to take a different view. Let us assume, but not assert, that under the special facts of the present case the

Campbell's Creek Railroad is a common carrier, performing a public transportation service. Does it follow that complainants are entitled to the precise relief asked for in the petition? They are asking for through routes and joint rates and divisions for the transportation of coal—and it may be noted only with respect to coal.

As a matter of fact, complainants now have, in substance, through routes. Cars are furnished the Campbell's Creek Coal Company by the Kanawha & Michigan and may be moved from Putney to and through Dana without unloading at Dana. Billing is not made until the cars reach Dana, but this appears to be a consequence of the fact that the Campbell's Creek Railroad and the Kanawha & Michigan have established a station there with a joint agent, and that the track scales have been built there. The substance of the relief requested, therefore, is that the Campbell's Creek Railroad and its shippers be given joint through rates, namely, the main-line or district rates which apply from Dana, or, in other words, that the Campbell's Creek Coal Company and other shippers on its line be relieved of the expense of getting the coal from the mine to the main line.

Complainants urge that the existing rates are unreasonable and cite in comparison the rates applying from the main line and branches of the Kanawha & Michigan and the Coal & Coke Railroad and the line of the Kanawha & West Virginia. The same comparisons are adduced to the point that the existing rates are unduly preferential to complainants' competitors. We believe that it is on this second aspect, namely, that of discrimination, that this case may be most satisfactorily considered.

On this issue the Kanawha and Michigan urges that to grant the main-line rates to complainants would be to discriminate against other mines in the district situated distances off its line—as distinguished from mines directly adjacent to its line—which are under the expense of bringing the coal from the mines to the main line. It instances some 10 mines in the district along its line east and west of Charleston between Red House, W. Va., on the west, and Gauley Junction on the east. These mines are the Plymouth Coal & Mining Company, the Black Betsey Coal Mining Company, the Otto Marmet Coal & Mining Company at Raymond City, the Virginia Coal Company, the Campiatt Coal Company, the Quincy Coal Company, the Hughes Creek Coal Company, the Sunday Creek Coal Company (mines 104, 105, 108), the Kelley's Creek Colliery Company, and the Cannelton Coal & Coke Company. These mines bring their coal to the main line in a variety of ways, by motor and rope haul, as well as by steam power, and over narrow-gauge as well as standard-gauge tracks. The distances from the point outside of the mine to the main line of the Kanawha & Michigan vary from hauls of about a mile

to six miles. The roads of the first-named seven appear to have no physical connection with the Kanawha & Michigan and could not interchange traffic, the coal being dumped from tipples into the cars on the main line. This, however, is not the case with the Sunday Creek Coal Company, the Kelley's Creek Colliery Company, and the Cannelton Coal & Coke Company. The mines of the Sunday Creek Company are situated on the Kelley's Creek Railway, some of them six miles from its junction with the Kanawha & Michigan at Cedar Grove. The Kanawha & Michigan places cars upon its storage tracks at Cedar Grove, and these cars are hauled to the mines and the loads returned to the Kanawha & Michigan by the Kelley's Creek Railway, which is operated by the same persons who operate the Sunday Creek Coal Company's mines. All this service is performed by the Kelley's Creek Railway Company, and the entire expense is borne by the Sunday Creek Coal Company. The Kelley's Creek Railway is standard gauge, hauls some traffic for persons other than the Sunday Creek Company, and there is some other evidence under which it might be deemed a common carrier. The foregoing is typical of the Kelley's Creek Colliery Company and of the Cannelton Coal & Coke Company and their respective roads, except that in the case of the last-named company there is no evidence that its railroad is performing service for anybody other than the proprietary coal company. Apart from the question of the nature and status of these various roads, it does appear upon a broad view of the question that these coal companies would suffer discrimination in fact if their competitor, the Campbell's Creek Coal Company, were relieved of the expense borne by them of getting the coal from the mine to the main line.

It appears, however, that the Campbell's Creek Coal Company suffers discrimination under the existing situation in the enjoyment of the main-line rates by its competitors located on the lines of the Kanawha & West Virginia and the Coal & Coke railroads. Respecting the Kanawha & West Virginia, defendants, while not denying the community of interest between the Blue Creek Coal & Land Company and the railroad, urge that the railroad is quite different from the Campbell's Creek Railroad in that it is really a common carrier which operates through a productive oil, timber, and farming territory that furnishes the bulk of its tonnage, only 12 per cent of which is coal. It is pointed out that only 7 per cent of the total revenue of the road from all tonnage is supplied by the coal of the Blue Creek Coal & Land Company. The Coal & Coke situation defendants wish to eliminate from our consideration, first, because it was not mentioned in the petitions, and, secondly, because it is a main line with a greater mileage than the Kanawha & Michigan itself and, consequently, in a

different category from the other short lines considered. They have said, however, that if this Commission shall find discrimination in the treatment of complainants and the Kanawha & West Virginia, they, defendants, will be quite willing to cancel the joint rates with this road, their settled policy being not to grant or to extend main-line rates with divisions thereof to independent short lines controlled by industries thereon. While insisting that the Coal & Coke road is in a separate class, counsel for defendants in argument expressed the same willingness respecting the cancellation of the joint rates with it.

Although we are sensible of the differences between these roads and the Campbell's Creek Railroad, we are of opinion that upon a broad view of the situation there exists here an evident undue prejudice and disadvantage which should be corrected. It does not seem just that competitors of the Campbell's Creek Coal Company, located at Blakely, 34 miles from Charleston, or at Coalton, 172 miles from Charleston, should enjoy the main-line or district rates, while the Campbell's Creek Company, 18 miles from Charleston, must bear a charge 15 cents in excess of these rates. We hold, therefore, that this undue prejudice and disadvantage should be corrected either by canceling the application of the district rates to points on the line of the Kanawha & West Virginia and the Coal & Coke roads, or by establishing the district rates as joint rates with the Campbell's Creek Railroad. Under the second alternative it would be expected, of course, that defendants would make the same rates with all other roads similar to the Campbell's Creek Railroad.

In the foregoing we have omitted reference to complainants' contentions as to discrimination predicated on the fact that the main-line rates are enjoyed by points on the branch lines of the Kanawha & Michigan or specifically by Marting on the Smither's Creek branch. Defendants contend that this is not really a branch, but a part of the main line. However this may be, we are of opinion that the maintenance of the main-line rate from its own short four-mile branch furnishes no sufficient basis for complainants' contention that in so doing the Kanawha & Michigan is guilty of undue prejudice to complainants.

Aside from the question of rates a point is raised regarding the obligation of the respective roads as to the furnishing of cars. At present none of the 94 coal cars owned by the Campbell's Creek Railroad are exchanged with the Kanawha & Michigan, but they are all used in transporting the product of the Campbell's Creek mine to the coal company's river tipple, where the coal is transferred to the company's barges for river transportation to Cincinnati. It may be noted in passing that two-thirds of the mine's output moves to market in this manner and up to the present only one-third is shipped over

the rails of the defendants. The cars for rail shipments are furnished by the defendants and no per diems are paid on these cars by the Campbell's Creek Railroad. In the matter of car distribution the Campbell's Creek Coal Company is treated as a shipper on the line of the Kanawha & Michigan, and receives, with other mines on the Kanawha & Michigan and its branches, its share of cars. The Campbell's Creek Railroad Company and the Campbell's Creek Coal Company are seeking the maintenance of the above condition in regard to car distribution. Their contention is based upon the provision of section 1 as amended, which reads as follows:

Any common carrier subject to the provisions of this act upon application of any lateral branch line of railroad or of any shipper tendering interstate traffic for transportation shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private sidetrack which may be constructed to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper.

They urge that under this provision the Campbell's Creek Railroad is a lateral branch line, that it is entitled to a connection with the trunk line, the Kanawha & Michigan, and that the said trunk line and its connections are under obligations to furnish cars to shippers located on the lines of the Campbell's Creek Railroad. Although in the remarks of counsel at argument there is some suggestion of a restriction, the contention would seem to be that this obligation rests solely on the trunk line and its connections, and that the lateral branch road, the Campbell's Creek Railroad, is free of the obligation of furnishing cars. This interpretation of the act we believe to be incorrect. In *Huerfano Coal Co. v. C. & S. E. R. R. Co.*, 28 I. C. C., 502, recently decided by us, we held that that portion of section 1 which makes it the duty of every carrier subject to the act to provide transportation, including cars, upon reasonable request therefor, must be read into and made a part of that portion of section 1 which deals with the matter of switching connections between common carriers and lateral branch lines; that each carrier subject to the act is charged with the duty of furnishing cars to industries located upon its line; and that in the case of through routes composed of two or more carriers, the obligation to furnish cars for transportation over such through routes is joint upon the carriers therein.

It remains to notice the contention advanced by the Kanawha & Michigan in an additional memorandum brief to the effect that the testimony shows that the Campbell's Creek Railroad Company and the Campbell's Creek Coal Company are virtually one, and that consequently, as to the carriage of the coal of the coal company by

the railroad company, the railroad can not, in view of the commodities clause of the act, lawfully be held to be a common carrier of interstate commerce. The brief refers to *U. S. v. D. & H. Co.*, 213 U. S., 366, and to *U. S. v. L. V. R. R. Co.*, 220 U. S., 257. It relies in the main on the holding of the latter case, as expressed in the following portion of the opinion:

* * * Our duty is to enforce the statute, and not to exclude from its prohibitions things which are properly embraced within them. Coming to discharge this duty it follows, in view of the express prohibitions of the commodities clause, it must be held that while the right of a railroad company as a stockholder to use its stock ownership for the purpose of a bona fide separate administration of the affairs of a corporation in which it has a stock interest may not be denied, the use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company so voluntarily acting as to such producing, etc., corporation within the prohibitions of the commodities clause. In other words, that by operation and effect of the commodities clause there is a duty cast upon a railroad company proposing to carry in interstate commerce the product of a producing, etc., corporation in which it has a stock interest not to abuse such power so as virtually to do by indirection that which the commodities clause prohibits, a duty which plainly would be violated by the unnecessary commingling of the affairs of the producing company with its own, so as to cause them to be one and inseparable.

This and the preceding case in the portions here relevant deal with the question as to whether a carrier violates the commodities clause by having at the time of transportation an interest "direct or indirect" in the commodity transported when such commodity is manufactured, mined, produced, or owned by a corporation in which the *railroad company* is a stockholder. Such cases are, of course, not on all-fours with the present one. Here at first the stock of the railroad was owned by the coal company, and now, as the result of advice of counsel given at the threshold of the suit, the stock of the railroad company has been distributed among the stockholders of the coal company, so that both are at present owned by the same persons.

The Kanawha & Michigan argues that this difference in the facts does not take the instant case outside the rule of the *Lehigh Valley case*. There would seem to be much to be said for this view, assuming an identity in fact in the administration of the affairs of the two companies. It would appear from the opinion of the court in the *Lehigh Valley case* that it is not the fact of the ownership by the *railroad* of the stock of the producing company that constitutes a violation of the clause—indeed it was held in the earlier *Delaware & Hudson case* that mere stock ownership in the producing corporation by the railroad did not give the railroad the prohibited interest in the commodity transported—but it is rather its possible consequence,

the commingling in administration of the affairs of the two companies so that they are virtually one. It would seem further, that since it is the fact of identity, the commingling of the affairs of the two companies, which causes the prohibited interest, it is immaterial under what form of stock ownership the consequence may have been brought about. This view is not inconsistent with our earlier statements that mere ownership of a railroad by the principal shipper on its line is not prohibited by the act.

Assuming that the law is as we have above tentatively stated it, do the facts of the present case show, as suggested by the brief, that it would be impossible to hold the Campbell's Creek Railroad a common carrier without finding it guilty of a violation of the clause? It should be noted at the outset that respecting the transportation over the Campbell's Creek Railroad between Putney and Dana the Campbell's Creek Coal Company is the shipper, since it pays the 15-cent rate, the consignee bearing only the cost of transportation from Dana to destination. Are the shipper and the railroad one? A witness for complainants testified that the affairs of the two companies are kept separate and distinct, each company having its own bank account, bookkeeping account, and paying its own employees. As against this general testimony one is met at the outset by the impression of the inherent probability of identity in administration resting on the identity of interest in the common ownership of both companies by the same people and the circumstance that these common owners have chosen substantially one and the same set of individuals to administer both companies. This impression is lent added color when one considers the other evidences of identity developed at the hearing, some of which have been already mentioned, namely, that the two companies conduct their affairs from separate rooms in the same suite of offices; that until its attention was called to it by opposing counsel at the hearing the coal company was apparently indifferent to the fact that the railroad company was using its property without paying for the use of it; that until as late as the past year Mr. Putney, the coal company's storekeeper, was selling tickets for the railroad company without receiving any pay for his service; that the coal company had informally played banker to the railroad for a long period, having lent it, under the name of advances on freight charges, some \$60,000, a debt which apparently has no date of maturity and which is evidenced only by debit and credit entries on the books of the respective companies.

While all this is persuasive to the conclusion that underneath the separateness in form there must be an identity in substance, we are of opinion upon final consideration that the record before us does not contain sufficient weight of proof to sustain such a conclusion. In

this view of the evidence we are consequently not under the necessity of passing judgment as to the correctness of the interpretation of the law suggested in the brief, which we have discussed above. We may say, however, that whatever may be the doubt as to whether the letter of the law as it now stands will sustain this construction, there is no doubt in our minds that the central fact of the situation we have been discussing, namely, the ownership of the railroad by the producing corporation, or the common ownership of both corporations by the same persons, may just as easily be the means of a complete commingling of the affairs of the two companies as the ownership of the producing corporation by the railroad, and that, given the identity between the two companies, the evils which the commodities clause was designed to prevent would be no different or no less likely to ensue whether the identity was brought about in the one way or in the other.

Recurring to the central considerations of the case, we find that while the maintenance by the defendants of the main-line or district rates from points on the branches of the Kanawha & Michigan Railway while denying them to complainants does not constitute undue and unreasonable prejudice and disadvantage to complainants, the maintenance of these rates from points on the Kanawha & West Virginia and the Coal & Coke railroads is, under the circumstances, unduly prejudicial. Even though all of these carriers violated the commodities clause, such violation could be no justification for this unlawful discrimination in rates. We hold that this discrimination should be eliminated either by canceling the application of the main-line or district rates to points on the roads last named or by establishing these rates as joint rates with the Campbell's Creek Railroad.

Under our conclusions we will award no reparation. An order in accordance with these conclusions will be entered.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 302.

BOXBOARD RATES FROM WILMINGTON, ILL., AND
OTHER POINTS TO CHICAGO, ILL., AND MILWAUKEE,
WIS., AND OTHER POINTS.

Submitted January 21, 1914. Decided March 2, 1914.

Proposed increase in rate on strawboard, boxboard, chipboard, and other paper-stock products from Wilmington, Ill., to Milwaukee and other points in Wisconsin and Indiana held not to be justified and tariffs directed to be canceled.

G. A. Kelly for Chicago & Alton Railway Company.

R. H. Widdicombe for Chicago & North Western Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

Walter H. Bell for American Straw Board Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*.

The present rate on strawboard, chipboard, and boxboard in carloads from Wilmington, Ill., to Chicago is $4\frac{1}{2}$ cents per 100 pounds, and to Chicago group points 5 cents. The former rate applies on shipments delivered within the switching limits of Chicago, as described in Lowry's switching tariff, and the latter to points contiguous to Chicago, including Hammond and Gary, Ind. The present rate from Wilmington to Milwaukee is $6\frac{1}{2}$ cents and to Milwaukee group points $8\frac{1}{2}$ cents. The latter includes such points as Racine, in the general vicinity of Milwaukee. It is proposed by the tariff under suspension to increase the rate to Chicago group points from 5 to $6\frac{1}{2}$ cents, and to Milwaukee proper to the Milwaukee group basis, or from $6\frac{1}{2}$ to $8\frac{1}{2}$ cents. The rates of $4\frac{1}{2}$ cents to Chicago proper and of $8\frac{1}{2}$ cents to the Milwaukee group it is not proposed to increase. The protestant, the American Straw Board Company, which operates a strawboard mill at Wilmington, is interested particularly in the Milwaukee rate.

Strawboard is made into sheets or boards from straw. Boxboard is a broad term for all boards made from paper stock and similar material. Chipboard is a product of boxboard, the term having been originally employed to define a certain grade of board made from clippings or cuttings from paper-box factories. All these various kinds of paper board are made from waste paper, either news or wrapping, or from straw or wood pulp which goes into the manu-

facture of paper. The minimum weight applicable to these various commodities is 40,000 pounds per car. Protestant's shipments average about 50,000 pounds per car. The output of protestant's mill at Wilmington is about two 50,000-pound cars per day when running to full capacity. Protestant ships only the boards from which the boxes are made. They are tied in bundles when offered to the carriers.

The respondent carriers herein, parties to this tariff, state that the proposed increases are the result of a general readjustment of paper-board rates throughout this general territory, necessitated by the present conditions of their tariffs, which contain many rates that are rarely, if ever, used, as well as many inaccuracies and ambiguities and some violations of the fourth section of the act, the readjustment to Milwaukee being primarily due, in fact, to violation of this section of the act. The present rate from Wilmington to Racine is $8\frac{1}{2}$ cents, and to Milwaukee, on shipments passing en route through Racine, $6\frac{1}{2}$ cents. It is therefore proposed to increase the Milwaukee rate to $8\frac{1}{2}$ cents, so that the intermediate rate will not exceed a rate to the more distant point. Respondents also direct attention to the fact that the rate from Marseilles, Ill., has already been increased to the basis of the rate proposed in the tariff under suspension from Wilmington. Mills located at Marseilles are some of protestant's active competitors. Marseilles is 77 miles from Chicago by direct haul of the Rock Island. Wilmington is 52 miles from Chicago by direct haul of the Chicago & Alton. The distance from Wilmington to Milwaukee is 137 miles. The carriers further direct attention to another mill point with which protestant is in active competition, namely, Otsego, Mich., from which point the rate to Chicago is $7\frac{1}{2}$ cents and to Milwaukee 9 cents for distances of 173 and 258 miles, respectively. A statement of rates from other points at which mills competing with protestant are located is submitted by respondents. Protestant also refers to these latter rates as establishing its own contention that the proposed rates from Wilmington are excessive considering the relative distances. Thus to Milwaukee rates are, from Childsdales, Mich., 8 cents for 391 miles; from Kalamazoo, Mich., 9 cents for 226 miles; Grand Rapids, Mich., 8 cents for 263 miles; Kokomo, Ind., 8 cents for 225 miles; Elkhart, Ind., 8 cents for 186 miles; and Lafayette, Ind., 8 cents for 205 miles.

Protestant also refers to rates from Aurora, Peoria, Pekin, Rock Falls, and Rockford, all in Illinois, from which points it also meets active competition in the sale of its product at Milwaukee. The rates from these points are not included in the general readjustment. These rates to Milwaukee are from Aurora, $6\frac{1}{2}$ cents for 115 miles; from Peoria and Pekin, $8\frac{1}{2}$ cents for 240 miles; from Rock Falls, 7.35 cents for 198 miles; and from Rockford, $6\frac{1}{2}$ cents for 100 miles.

The present rate from Wilmington is, as stated, 6½ cents for 137 miles, and the proposed rate 8½ cents.

Considering all the facts appearing, it is our conclusion that the carriers have not sustained the burden of proof placed upon them by the statute with respect to the proposed increases, and we shall direct the tariffs carrying them to be canceled.

In reaching this conclusion we are not to be understood as disapproving or discouraging respondents' efforts to iron out errors, ambiguities, or inconsistencies from their tariffs. We are influenced in our findings mainly by the fact that the readjustment now proposed changes, to its disadvantage, the relation which Wilmington has in the past borne to competitive points in Illinois. We do not mean to suggest that in correction of this situation rates from Aurora, Rockford, and other points in Illinois should be advanced with Wilmington. How a readjustment that will not detrimentally affect one or more of these mill points to the advantage of others in that state can be worked out is a matter for the respondents to determine in the first instance. If this can be satisfactorily done by them, they may at any time file tariffs carrying such readjustment, subject of course to further investigation by the Commission if necessary.

29 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 263.
NEW ENGLAND AND CANADIAN HIGH EXPLOSIVES
RATES.

Submitted July 30, 1913. Decided March 16, 1914.

Withdrawal of commodity rates on high explosives from Mississippi River points to the east permitted.

C. C. P. Rausch for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Commodity rates on high explosives from St. Louis, Mo., and related points to Philadelphia, Pa.; New York, N. Y.; Boston, Mass.; and points taking same rates, as well as to destinations in Canada, were sought to be withdrawn in supplements 13 and 14 of joint tariff issued as agent Cameron's I. C. C. D-46 and agent Hosmer's I. C. C. A-311, effective May 15, 1913. As this cancellation left higher combination to apply in certain instances, the operation of the aforesaid schedules, by appropriate orders, was suspended until March 12, 1914. The *Ætna Powder Company*, of Chicago, Ill., the sole protestant, withdrew its complaint prior to the hearing and did not appear thereat.

There is no rating upon high explosives in official classification, but in the exceptions thereto, published by agent Morris, a rating is provided. Many of the lines for whom agents Cameron and Hosmer issued were originally not parties to Morris's exceptions. This, of course, precluded the application of class rates on high explosives via those lines. Accordingly, specific commodity rates to eastern and Canadian destinations were published in the joint issue of agents Cameron and Hosmer, such rates, however, being in every instance the exact equivalents of the class rates which would have applied under Morris's exceptions.

With the increase in the list of issuing carriers to the aforesaid exceptions, it was thought that simplicity and economy might best be conserved by eliminating the commodity rates and merely referring to the exceptions to the classification for a determination of the application of the rates and rules governing the transportation of high explosives. This was sought to be accomplished by the issues suspended, and, in so far as destinations served by carriers parties to the exceptions to official classification are concerned, no increase in

rates on high explosives has been made; in fact, it is specifically averred that no such increase was contemplated. However, there are some carriers parties to agents Cameron and Hosmer's tariff which are not parties to Morris's exceptions, and high explosives moving via such lines are subject to a combination of rates which represent substantial increases. This is particularly true of Boston, as none of the carriers reaching that point is a party to the exceptions to official classification. From the testimony of the only witness appearing for the respondents, we are convinced that this is an oversight.

We are not advised whether there is any movement of high explosives from St. Louis to Boston or points taking same rates, and have received no information from the protestant, whose complaint, as already observed, has been withdrawn. This Commission should not be expected in every case to check superseding issues of all tariffs to determine whether or not, by any possible construction, a rate may be increased via a possible route over which there may or may not ever have been any movement.

The proceeding should be discontinued, and it will be so ordered.

29 I. C. C.

No. 5001.
J. T. STONE & SON
v.
SOUTHERN RAILWAY COMPANY.

No. 5001 (Sub-No. 1).
GRIFFIN-HALLMAN FUEL COMPANY
v.
SAME.

Submitted October 7, 1912. Decided March 9, 1914.

Rate of \$2.05 per ton on coal from Newcomb, Tenn., to Greenville, S. C., found to have been unreasonable in so far as it exceeded a rate of \$1.95. Reparation awarded

John H. Earle for complainants.

Claudian B. Northrop for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants in these proceedings, J. T. Stone and A. C. Stone, doing business as J. T. Stone & Son, and Griffin-Hallman Fuel Company, to whom J. T. Stone & Son are successors in interest, were engaged in the coal business at Greenville, S. C. By complaints filed July 3, 1912, they allege that a rate of \$2.05 per ton charged on shipments of coal from Newcomb, Tenn., to Greenville was unjust and unreasonable. Reparation is asked.

The shipments in No. 5001, numbering 4 cars, moved during the period from June 6 to June 23, 1911. The aggregate weight of the coal was 124 tons, and charges were paid thereon in the sum of \$254.20 at the rate of \$2.05 per ton. The shipments in No. 5001 (Sub-No. 1), numbering 5 cars, moved during the period from April 22 to May 18, 1911. The aggregate weight of these shipments was 180 tons, and charges were paid thereon in the sum of \$369 at the rate of \$2.05 per ton.

The Newcomb mines are in the northeastern part of Tennessee, in what is known as the Jellico group, designated by defendant in its tariff as group No. 9. About 30 miles to the southward, and to the northwest of Knoxville, are the Coal Creek mines in what is known as group No. 7.

The Jellico group has for a number of years taken a uniform differential of 10 cents per ton over the Coal Creek rate on traffic destined to points in South Carolina. Rates from the Coal Creek group to Carolina territory have, in turn, for several years sustained a fixed relationship to the rates from mines in southwestern Virginia. The relationship of rates to this Carolina territory from the Coal Creek group, on the one hand, and the southwestern Virginia mines, on the other, has been the subject of inquiry in former proceedings before us. *Black Mountain Coal Land Co. v. S. Ry. Co.*, 15 I. C. C., 286; *Andy's Ridge Coal Co. v. S. Ry. Co.*, 18 I. C. C., 405. Without going at length into the facts and the history of the rates involved as recited in the reports of those cases, it is sufficient to state that as a result of our orders therein, certain changes were made in the adjustment of rates as between the Coal Creek and southwestern Virginia mines on traffic to Carolina territory. Briefly, it may be stated, following the decision and order in the *Andy's Ridge case*, the carriers fixed an adjustment under which the rate from the southwestern Virginia mines to Spartanburg, S. C., and points taking the same rate, was made \$2.05, while the rate from Coal Creek to the same points was made \$1.95, the latter being thereby increased from \$1.80. At the same time the rate from the Jellico group, including Newcomb, was increased from \$1.90 to \$2.05, thus preserving the established relationship between the Jellico and Coal Creek groups.

Complaint was made against the increased rate from Coal Creek to Spartanburg and points in the Spartanburg group taking the same rate. Upon investigation we held that defendants had failed to show the increased rate of \$1.95 to be reasonable and that for the future the rate from Coal Creek to Spartanburg should not exceed \$1.85 per ton. We further held that complainants who had received coal under the \$1.95 rate were entitled to reparation on basis of the rate found reasonable. *Victor Mfg. Co. v. S. Ry. Co.*, 21 I. C. C., 222.

Upon a subsequent proceeding to determine the amounts of reparation, an issue was raised as to whether complainants in the original case, who had received coal at points other than Spartanburg, but taking the same group rates, should be awarded reparation. Greenville was one of the points in that group. After considering the contentions of the defendant carriers, and the testimony of their witness to the fact that rates from Coal Creek to all the points in question had always been published as group rates, we held that the rates to the points involved were group rates and must necessarily be considered from that standpoint. Reparation was accordingly awarded to all complainants who received coal at such points. *Victor Mfg. Co. v. S. Ry. Co.*, 27 I. C. C., 661.

The issue in the instant case is the reasonableness of the rate of \$2.05 in effect from Newcomb in the Jellico group to Greenville in the Spartanburg group. This rate was in effect contemporaneously with the \$1.95 rate from Coal Creek to the Spartanburg group which we found to be unreasonable in the *Victor Mfg. Co. case, supra*. It conformed to the recognized relationship of rates between the Jellico and Coal Creek groups and the propriety of this relationship has not been questioned.

The rate having been increased on August 15, 1910, the burden is upon the defendant to justify the increased rate. This it has not attempted to do. No evidence was introduced by it at the hearing of the instant case, but instead its counsel stated that this case would depend upon the decision in the later *Victor Mfg. Co. case*, in which, as we have stated, reparation was awarded to all complainants who had paid the unreasonable rate.

For reasons given in the case last referred to and considering all the facts and circumstances of record herein, we are of the opinion, and find, that the increased rate of \$2.05 from Newcomb to Greenville was unreasonable to the extent it exceeded \$1.95 per ton.

The record establishes that complainants in No. 5001, J. T. Stone & Son, bought out the business of the Griffin-Hallman Fuel Company, complainant in No. 5001 (Sub-No. 1), on April 25, 1911. Although two of the shipments to the latter concern moved prior to that date, the record shows that J. T. Stone & Son received the same and paid the freight on all of the five shipments and are therefore the real parties in interest. We therefore find that complainants, J. T. Stone & Son, received the shipments covered by complaints Nos. 5001, and also 5001 (Sub-No. 1); that they paid charges thereon at the rate herein found to have been unreasonable; that they have been damaged thereby in an amount equal to the difference between the amounts which they did pay and the amounts which they would have paid had the rate of \$1.95 herein found reasonable been applicable; and that they are, therefore, entitled to an award of reparation in the sum of \$30.40, with interest from July 5, 1911.

As the rate found reasonable has been in effect for more than two years, no order for the future is deemed necessary.

29 L. C. C.

No. 5374 and No. 5374 (Sub-No. 1).
UNITED STATES OF AMERICA

v.

RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD
COMPANY ET AL.

Submitted January 15, 1914. Decided March 2, 1914.

Classification of "projectiles, empty or solid, other than small arm, in boxes, 1. c. 1., first class. In packages or loose, c. 1., minimum weight 30,000 pounds, fourth class," not found to be unreasonable or unduly prejudicial. Complaint dismissed.

William Butterworth Crowell and Graham Egerton for complainant.
R. Walton Moore and M. Carter Hall for Richmond, Fredericksburg & Potomac Railroad Company and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant questions in this proceeding the reasonableness of an item in the current southern classification:

Projectiles, empty or solid, other than small arm, in boxes, 1. c. 1., first class. In packages or loose, c. 1., minimum weight 30,000 pounds, fourth class,

particularly in its application to empty target projectiles used by the United States navy in target practice. Reparation is claimed on four carload shipments that moved from Richmond, Va., to Fort Mifflin, Pa. While the provision also covers loaded shell for use in active warfare, the shipments specifically involved in this proceeding are only of the empty projectile. It appears that there is practically no difference between the construction of the empty and loaded shell except in the material used, the former being made of cast iron, the latter of steel. Both kinds are cylindrical in shape, at one end gradually tapering to a point, the other or base end being cut squarely off, enabling it to stand on end. While various sizes of these shell are made, those specifically involved here are 12 and 14 inches in diameter. On the outside of the shell a copper band from 1 to 1½ inches wide, partially sunk into and projecting slightly above its surface, encircles it about 1½ inches from the base end. The function of this band is to take the rifling of the gun; that is, the soft metal in leaving the gun sinks into the horizontal grooves of the gun's interior and gives to the shell a rotary motion. Into the base end of the shell is screwed a steel base plug, threaded and adjusted to one two-thousandths of an inch. In the loaded shell

there is a fuse hole through this base plug which ignites the interior explosive after the shell has penetrated the armor plate. In the armor-piercing shell there is screwed to the pointed end a small steel cap, which increases the penetrating qualities, and to this cap is attached a wind shield. The projectiles used in target practice are not filled with explosive, and the same is true of the armor-piercing shell when offered to the railroad companies for their first transportation. They are not so fitted until their arrival at the naval magazine and before their final transportation to the ship for use. Shell load from 37,000 to 105,000 pounds to the car, the average over a given period checked by complainant being 73,137 pounds. They are loaded loose in carloads and are separated from each other only by a rope or so-called grommet encircling the shell at each end to prevent rubbing. In less than carloads, they are usually loaded in boxes, although this is claimed to be a recent departure and not to be necessary.

Target shell are worth, in the 12-inch size, about \$35, and in the 14-inch size, \$54; armor-piercing or loaded shell, \$279.40 and \$500 in these respective sizes.

Complainant contends that the classification should be changed from first class in less than carloads and fourth class in carloads to second class in less than carloads and fifth class in carloads. At the time complaint was filed the carload rating was third class. It was reduced to fourth class as a result of the complaint. The prayer, if granted, would have the effect of reducing the charges from Richmond to Fort Mifflin from 37 cents in less than carloads and 23 cents in carloads to 32 cents in less than carloads and 17 cents in carloads. The basis of the request is the existence of lower ratings on what are claimed to be analogous articles, not only in the southern, but in the western and official classification territories, and lower class ratings on shell in official and western classification territory. In the official classification "projectiles, empty," are rated second class in less than carloads and fifth class, minimum weight 36,000 pounds in carloads. In western classification the description is the same as in the southern, but the rating is second class in less than carloads, and fourth class, minimum weight 30,000 pounds in carloads. The articles alleged to be analogous include architectural fronts; car axles, carriage or wagon axles, n. o. s.; bells and gongs, n. o. s.; boats (5 feet or over), n. o. s.; bridge material; car-spring plates; nails, n. o. s., plain or brass or copper coated; shoes, horse, mule, or ox; kegs; bar steel, brass or copper covered, coated or plated; locomotive and car wheels; machinery; bar steel; nails and spikes in kegs; railway track material; all of which are rated in their respective classifications from second to sixth class in less than carloads and from fourth class to class.

in carloads. Attention is particularly invited by complainant to machinery, which is rated fifth class under the official classification, class A under the western, and sixth class in the southern. It is not contended that these articles are in any way competitive with shell, but it is insisted that from the standpoint of value, hazard in transit, per car revenue, and other transportation considerations, they are rated relatively much lower than are projectiles.

Defendants insist that the rating of machinery in a lower class than projectiles is not indicative of any unreasonableness in the classification of the latter. Machinery, they say, is usually rated in the lower classes only on the parts of the machine and not on the completed article, and where the whole machines, such as agricultural implements, are rated low in their complete form it has been for a necessary purpose, namely, the encouraging of agriculture and other pursuits in the different classification territories. Complainant refers for instance, to blacksmith-anvils as analogous to projectiles in some respects. As to these defendants say that a low rating is necessary because of the same motives and necessities that influence the rating of machinery. There is hardly a crossroads station, they say, without its blacksmith shop, and anvils are urgent necessities which must be given a rating on which the traffic will move. It is further stated by the carriers that various items of machinery are being withdrawn as rapidly as possible from the lower classes with the development of the country to a substantial and lasting basis and the ability of users of these articles to pay a normal rate on them. Where these considerations mentioned have not been influential in the low rating of machinery and iron and steel articles in general, defendants state that the classification has been induced by the fact, especially in official classification territory, that iron and steel articles constitute one of the staple commodities which move in perhaps the largest volume of any of their traffic, and that the classification of commodities depends in large measure upon the total volume of movement over the entire classification area and not between specified points therein. Arguing from this latter standpoint, they say that projectiles are not entitled to any lower basis of rating than now exists, inasmuch as the volume of movement is comparatively very small. Only 73 carloads of shell moved since September 1, 1911, and 10 carloads within the past year throughout the whole country.

It is testified on behalf of complainant that contracts have been let for 42 carloads of shell, which will be offered to the carriers within the next eight months. Shell are now manufactured almost exclusively at Richmond, Va. When completed, they are shipped to the naval magazines, of which there appear to be only a few receiving the supply, including Norfolk, Va., Fort Mifflin, Pa., and Hingham,

Mass. The only other movement is an occasional one to some public park or to a given point for exhibition purposes. The present complaint asks reparation on only four carloads which have moved in the past two years.

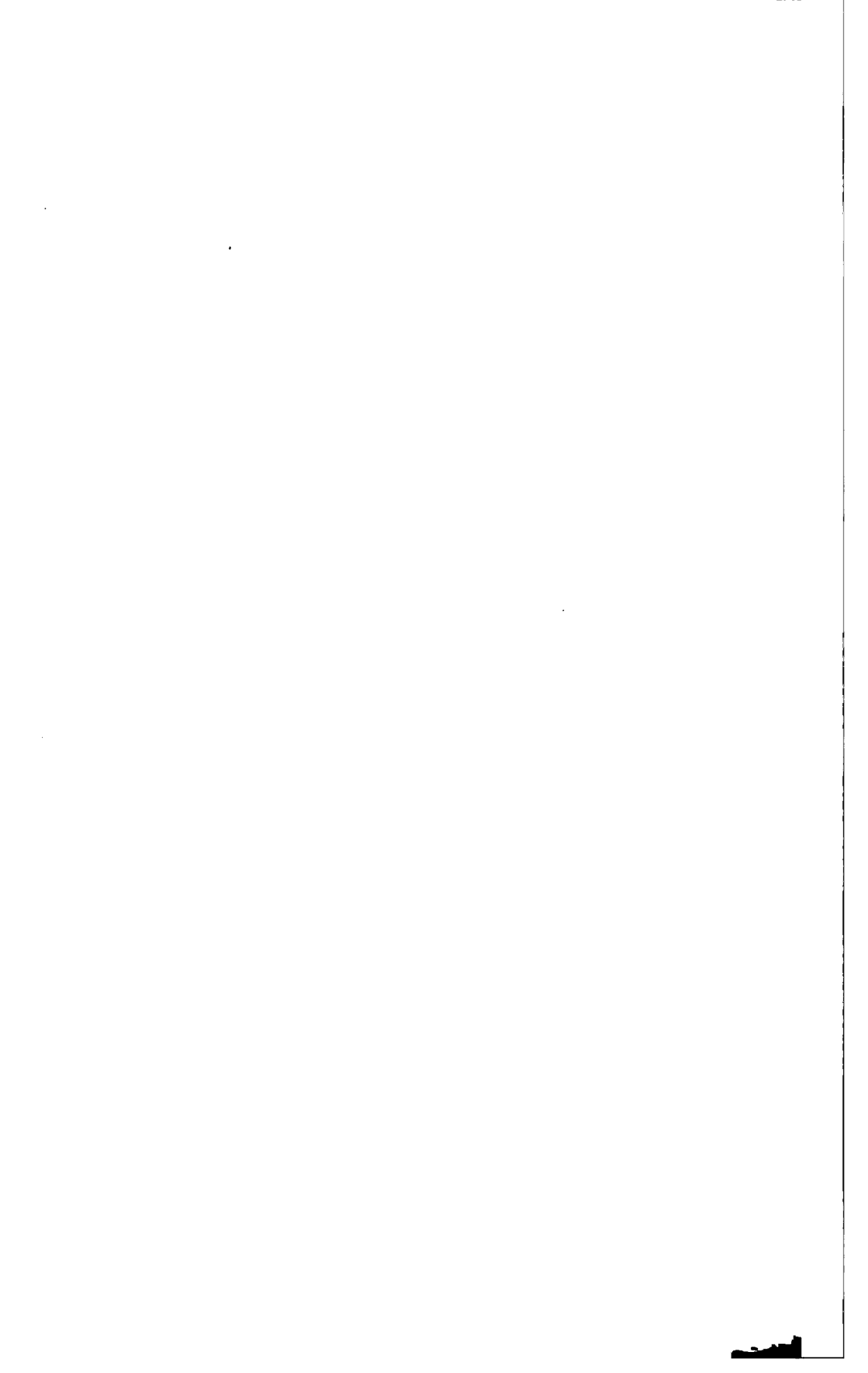
Originally the rating on shell was that applicable to cannon balls, which took second class in less than carloads and fourth class in carloads. This was as far back as 1895. The present Southern Classification Committee was organized in 1899. Its first issue of February 1, 1900, rated cannon balls first class in less than carloads and fourth class in carloads. On June 1, 1900, they were rated first class in less than carloads and third class in carloads. Up to November 1, 1912, all empty projectiles would move under a description no more definite than "cannon balls." On that date the present description was substituted.

Considering all the facts of record, we do not find that the classification of projectiles in the southern classification is unreasonable.

With respect to the specific shipments in question from Richmond to Fort Mifflin on which reparation is asked, complainant refers to certain comparative rates from Richmond to other points in official classification territory of greater distance than Fort Mifflin from Richmond which are lower in cents per 100 pounds than is applicable to Fort Mifflin, due to the fact that the traffic moves under official classification ratings instead of southern. The southern classification is applicable to Fort Mifflin from Richmond. Defendants contend that the official classification applies on the other traffic because of different transportation conditions from the conditions obtaining on shipments to Fort Mifflin.

Considering all the facts appearing of record in connection with this phase of the case, we do not find that the rates charged on the specific shipments in issue were unreasonable or unduly prejudicial.

The complaint will be dismissed.



CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED
REPORT DURING THE TIME COVERED BY THIS VOLUME.

644. **HEARST v. PHILADELPHIA & READING RAILWAY COMPANY ET AL.** Rates on anthracite coal from points in Pennsylvania to New York City and other points. *C. J. Shearn* for complainant. *C. Heebner, J. G. Johnson, F. H. Janvier, W. W. Ross, R. Thorne, A. Moot, D. Wilcox, L. E. Carr, F. I. Gowen, G. F. Brownell, J. D. Campbell, W. S. Jenney, R. W. De Forest, J. B. Kerr, and H. F. Newcomb* for defendants. Dismissed February 3, 1914.

684. **RICHMOND ELEVATOR COMPANY v. PERE MARQUETTE RAILROAD COMPANY.** Failure to furnish cars for shipments of hay and grain at Valley Center, Doyle, Avoca, Crosswell, and Memphis, Mich. *S. B. Spier* for complainant. *C. McPherson* for defendant. Dismissed February 3, 1914.

885. **SIOUX CITY & ROCK SPRINGS COAL MINING COMPANY v. UNION PACIFIC RAILROAD COMPANY.** Construction of switches, connections, and sidetracks at complainant's mine in Sweetwater County, Wyo. *H. Atkinson* for complainant. *J. N. Baldwin* for defendant. Dismissed February 3, 1914.

1130. **STARK v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.** Rates on cattle from Kansas, Colorado, Oklahoma Territory, Indian Territory, and Texas to Kansas City and St. Joseph, Mo. *Finley & Lyons, J. P. Gilmore, and J. W. Farrar*, for complainant. *G. Lathrop, R. Dunlap, and J. L. Coleman* for defendant. Dismissed on motion of complainant, February 3, 1914.

1131. **STARK v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.** Rates on cattle from Kansas, Colorado, Oklahoma Territory, Indian Territory, and Texas to Kansas City and St. Joseph, Mo. *Finley & Lyons, J. P. Gilmore, and J. W. Farrar* for complainant. *E. B. Peirce* for defendant. Dismissed February 3, 1914.

1132. **STARK v. MISSOURI PACIFIC RAILWAY COMPANY.** Rates on cattle from Kansas, Colorado, Oklahoma Territory, Indian Territory, and Texas to Kansas City, Mo. *Finley & Lyons, J. P. Gilmore, and J. W. Farrar* for complainant. No appearance for defendant. Dismissed February 3, 1914.

1133. **STARK v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.** Rates on cattle from Kansas, Colorado, Oklahoma Territory, Indian Territory, and Texas to Kansas City, Mo. *Finley & Lyons, J. P.*

Gilmore, and *J. W. Farrar* for complainant. *E. B. Peirce* for defendant. Dismissed February 3, 1914.

1134. *STARK v. UNION PACIFIC RAILROAD COMPANY*. Rates on cattle from Kansas, Colorado, Oklahoma Territory, Indian Territory, and Texas to Kansas City, Mo. *Finley & Lyons*, *J. P. Gilmore*, and *J. W. Farrar* for complainant. *J. N. Baldwin* for defendant. Dismissed January 6, 1914.

1186. *GRIFFIN v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.* Rates on lumber from Bells Landing, Pa., to Sidney, N. Y. No appearance for complainant. *E. H. Boles* for the New York Central & Hudson River Railroad Company. Dismissed February 3, 1914.

1237. *BUFFALO HARDWOOD LUMBER COMPANY ET AL v. SOUTHERN RAILWAY COMPANY ET AL.* Rates on hardwood lumber from Mississippi points via Ohio River gateways. *W. A. Percy* for complainant. *S. F. Andrews* for defendants. Dismissed February 3, 1914.

1282. *MERCHANTS COAL COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY*. Discrimination in car distribution at mines of complainant at Elk Lick and Boswell, Pa., and Tunnelton, W. Va. *W. A. Glasgow, Jr.*, for complainant. No appearance for defendant. Dismissed on motion of complainant, March 3, 1914.

1394. *PENNSYLVANIA RAILROAD COMPANY ET AL v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY*. Refusal to pay per diem rental of fifty cents. *F. I. Gowen*, *J. D. Campbell*, *R. W. de Forest*, *G. F. Brownell*, *H. L. Bond, Jr.*, *W. S. Jenney*, *W. S. Opdyke*, *J. J. Beattie*, and *E. B. Thomas* for complainants. *E. D. Robbins* for defendant. Dismissed on motion of complainant, March 3, 1914.

1634. *UNITED STATES v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.* Rates on wet gun cotton from Newport, R. I., to Carneys Point, N. J. *J. E. Pillsbury* for complainant. *C. Heebner*, *J. E. Reynolds*, and *E. G. Buckland* for defendants. Dismissed on motion of complainant, February 3, 1914.

1757. *QUIMBY ET AL. v. MAINE CENTRAL RAILROAD COMPANY ET AL.* Milling in transit. *A. M. Rollins* for complainants. *E. J. Rich* and *Thaxter & Holt* for defendants. Dismissed February 3, 1914.

1949. *JENNISON COMPANY ET AL. v. GREAT NORTHERN RAILWAY COMPANY ET AL.* Lake-and-rail rates on flour from Minneapolis, Minn., to New York, N. Y., and other Atlantic seaboard points. *A. E. Clarke*, *W. M. Hopkins*, *M. Shire*, *A. Stock*, *M. L. Finnell*, *M. S. Blish*, *D. W. Dietrich*, *L. Richards*, *H. J. Horan*, *H. G. Wilson*, *J. C. Lincoln*, *C. F. Sparks*, and *W. C. Ellis* for complainants. *C. Brown*, *R. Shaw*, *H. S. Noble*, *A. Patriarche*, *F. E. Signer*, *S. A.*

Lynde, G. W. Kretzinger, H. W. Ackhoff, H. A. Taylor, G. S. Patterson, and W. A. Parker for defendants. Dismissed February 3, 1914.

2725. *HOULKA TIE COMPANY v. MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY ET AL.* Rates on crossties from points in Mississippi to Cairo, Ill. *C. L. Crum* for complainant. *R. V. Fletcher and H. L. O'Dwyer* for defendants. Transferred to Special Docket for adjustment, February 21, 1913.

3044. *NATIONAL ASSOCIATION OF THE GRANITE INDUSTRIES OF THE UNITED STATES ET AL. v. SOUTHERN RAILWAY COMPANY ET AL.* Rates on granite, marble, stone, and slate. *S. W. Jones and D. O. Ives* for complainants. *R. W. Moore, E. J. Rich, C. H. Blatchford, and M. P. Callaway* for defendants. Complaint satisfied. Dismissed January 12, 1914.

3365. *KOHLBERG v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.* Rates on wheat from Woodbine and Ijamsville, Md., to Woodstock, Va. *G. H. Lamar* for complainant. *W. A. Parker* for Baltimore & Ohio Railroad Company. Dismissed for want of prosecution, January 12, 1914.

3881. *TRAFFIC BUREAU OF THE SIOUX CITY COMMERCIAL CLUB v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Class rates from Sioux City, Iowa, to points in Minnesota. *G. T. Bell, W. P. Trickett, and T. A. McGrath* for complainants. *C. C. Wright, F. P. Eyman, J. B. Sheean, H. M. Pearce, J. D. Armstrong, and J. F. Finerty, Jr.,* for defendants. Complaint satisfied. Dismissed January 12, 1914.

4220. *NORWOOD v. ADAMS EXPRESS COMPANY ET AL.* Rates on fruits, vegetables, butter, and eggs from Arkansas to points in other states. *Borders & Walter* for complainant. *J. Eggleston, O'Brien, Boardman & Platt, T. B. Harrison, Jr., C. W. Stockton, W. H. Burr, and C. L. Loop* for defendants. Dismissed on motion of complainant, March 3, 1914.

4290. *TRANSPORTATION BUREAU OF THE CITY OF WICHITA v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Rates on fruit and vegetables in tin cans from points in Missouri and Arkansas to Wichita, Kans. *A. E. Helm* for complainant. *F. H. Wood, H. G. Herbel, F. G. Wright, and F. J. Shubert* for defendants. Dismissed January 12, 1914.

4294. *TRANSPORTATION BUREAU OF THE CITY OF WICHITA v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Rates on dried and evaporated fruit from points in Arkansas to Wichita, Kans. *A. E. Helm* for complainant. *F. H. Wood* for St. Louis & San Francisco Railroad Company. Dismissed January 12, 1914.

4323. **BAXTER & COMPANY ET AL. v. GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY.** Rates on crossties from points in Georgia and Florida to Jacksonville, Fla. *C. L. Redding* for complainants. *M. P. Callaway* for defendant. Dismissed March 3, 1914.

4419. **GOLDFIELD CONSOLIDATED MINES COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.** Rates on iron pipe fittings from Los Angeles, Cal., to Goldfield, Nev. *W. P. Seeds* for complainant. *W. C. Cole* for defendants. Dismissed January 5, 1914.

4471. **CHATTANOOGA PLOW COMPANY v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.** Rates on carborundum from Niagara Falls, N. Y., to Chattanooga, Tenn. *A. B. Hayes* for complainant. *H. A. Taylor* and *T. H. Burgess* for Erie Railroad Company. Transferred to Special Docket for adjustment, February 17, 1914.

4667. **GRAHAM v. SOUTHERN RAILWAY COMPANY ET AL.** Rates on baled straw from Paeonian Springs, Va., to Washington, D. C. *W. R. Graham* for complainant. *W. C. Coleman* and *C. B. Northrop* for defendants. Transferred to Special Docket for adjustment, February 26, 1914.

4915. **CHAMBER OF COMMERCE OF THE CITY OF BEAUMONT, TEXAS, v. INTERNATIONAL & GREAT NORTHERN RAILWAY COMPANY ET AL.** Milling-in-transit rates on rough rice from points in Louisiana to points in Texas. *H. S. L'Hommedieu* for complainant. *H. A. Scandrett*, *J. P. Blair*, *H. G. Herbel*, and *F. G. Wright* for defendants. Dismissed without prejudice on motion of complainant, January 6, 1914.

4961. **ATLANTA JOURNAL COMPANY ET AL. v. SEABOARD AIR LINE RAILWAY ET AL.** Rates on news print paper from Berlin, N. H., to Atlanta, Ga. *W. A. Wimbish* for complainants. *C. D. Drayton*, *R. W. Moore*, and *C. H. Blatchford* for defendants. Dismissed March 2, 1914.

4973. **RAILROAD COMMISSION OF OREGON v. SOUTHERN PACIFIC COMPANY ET AL.** Rates on forest products from points in Oregon to points in other states. *J. N. Teal* for complainant. *W. D. Fenton* and *W. A. Robbins* for defendants. Dismissed on motion of complainant, January 12, 1914.

5116. **MITCHELL VENEER & LUMBER COMPANY v. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.** Rates on oak logs from Hickman, Ky., to Indianapolis, Ind. *G. M. Stephen* for complainant. *R. B. Scott* and *R. W. Moore* for defendants. Dismissed on motion of complainant, March 3, 1914.

5147. **WOODBURN ELEVATOR & MILLING COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.** Misrouting of shipment of coal from Kamont, Va., to Woodburn, Ind. *E. R. Moser* for com-

plainant. *A. S. Brandeis, W. A. Northcutt, and E. D. Hotchkiss* for defendants. Transferred to Special Docket for adjustment, February 17, 1914.

5477. *WEINHARD BREWERY v. CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.* Rates on pitch, l. c. l., from Ivorydale, Ohio, to Portland, Oreg. *J. N. Teal and W. C. McCulloch* for complainant. *C. A. Hart* for defendants. Transferred to Special Docket for adjustment, February 26, 1914.

5525. *ATHENS FIRE BRICK COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.* Rates on hollow building tile from Athens, Tex., to Shreveport, La. *C. D. Ward* for complainant. *H. G. Herbel and F. G. Wright* for Texas & Pacific Railway Company. Transferred to Special Docket for adjustment, January 26, 1914.

5538. *NORTHERN MERCANTILE COMPANY (LTD.) v. GREAT NORTHERN RAILWAY COMPANY ET AL.* Rates on Idaho cedar poles from Bonners Ferry, Idaho, to Mikon Station, Cal. *L. E. Gandy* for complainant. *T. Balmer, W. S. Gilbert, A. C. Spencer, and C. E. Swan* for defendants. Dismissed on motion of complainant, January 5, 1914.

5541. *DEWEY & COMPANY v. GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.* Rates on non self-propelling vehicles from Kalamazoo, Mich., to Plano and Kewanee, Ill. *Collett & Hutchinson* for complainant. *W. L. Louis, C. A. Hayes, R. B. Scott, O. E. Butterfield, C. Brown, and J. H. Campbell* for defendants. Transferred to Special Docket for adjustment, February 26, 1914.

5550. *HARDEMAN HAT COMPANY v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.* Rates on caps from New York, N. Y., to Seattle, Wash. *J. Fixott* for complainant. *L. B. du Ponte* for Northern Pacific Railway Company. Dismissed on motion of complainant, January 5, 1914.

5556. *UNITED STATES GYPSUM COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Rates on cement plaster from Eldorado, Okla., to Eldorado, Ark. *W. D. Lindsay* for complainant. *M. L. Clardy, H. G. Herbel, and F. G. Wright* for St. Louis, Iron Mountain & Southern Railway Company. Transferred to Special Docket for adjustment, February 26, 1914.

5635. *ALLEN v. UNION PACIFIC RAILROAD COMPANY ET AL.* Overcharge on account of overweight on shipments of coal from Rock Springs and Diamondville, Wyo., to Anaconda, Mont. *Brown & Thompson* for complainant. *W. S. Gilbert and A. C. Spencer* for defendants. Dismissed on motion of complainant, January 5, 1914.

5671. *NORTHERN MERCANTILE COMPANY v. SPOKANE INTERNATIONAL RAILWAY COMPANY ET AL.* Overcharge for overweight on
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cedar poles from Brown Creek Spur, Idaho, to Nyssa, Oreg. *L. E. Gandy* for complainant. *F. D. Allen*, *W. S. Gilbert*, and *A. C. Spencer* for defendants. Dismissed on motion of complainant, January 5, 1914.

5744. *AMERICAN WELL & PROSPECTING COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.* Rates on rough iron casting from St. Louis, Mo., to Corsicana, Tex. *O. M. Rogers* for complainant. *R. D. Coleman* for defendants. Transferred to Special Docket for adjustment, February 26, 1914.

5847. *AMERICAN FURNITURE COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Minimum weight on chairs from Port Washington and Milwaukee, Wis., and Chicago, Ill., to Denver, Colo. *J. Fibiger* for complainant. *H. H. Holcomb* and *L. T. Wilcox* for defendants. Dismissed on motion of complainant, January 5, 1914.

5863. *BLAKESLEE MANUFACTURING COMPANY v. PENNSYLVANIA RAILROAD COMPANY ET AL.* Rates on coke from Crabtree and Bentleyville, Pa., to Du Quoin, Ill. No appearance for complainant. *A. P. Humburg*, *C. C. Cameron*, *T. W. White*, and *J. C. Venning* for defendants. Dismissed for want of prosecution, January 12, 1914.

5883. *LITTLE LUMBER COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.* Rates on coal from La Veta, Colo., to Lyons, Nebr. *H. Rhoades* for complainant. *H. A. Scandrett* and *W. F. Dickinson* for defendants. Dismissed on motion of complainant, January 12, 1914.

5884. *LANING-HARRIS COAL & GRAIN COMPANY v. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.* Misrouting of shipment of coal from Benton, Ill., to Platte City, Mo. *H. Harris* for complainant. *G. H. Kummer* and *W. T. Hughes* for defendants. Dismissed on motion of complainant, January 5, 1914.

5911. *MERCHANTS FREIGHT BUREAU OF LITTLE ROCK for THE SOUTHERN COTTON OIL COMPANY v. FORT SMITH & WESTERN RAILROAD COMPANY ET AL.* Rates on cotton seed from Oklahoma to Little Rock, Ark. *A. R. Bragg* for complainant. *G. E. Schnitzer*, *J. J. Gibson*, *F. G. Wright*, and *F. P. Sackbauer* for defendants. Dismissed without prejudice on motion of complainant, January 12, 1914.

5936. *POUNCEY PAVING AND CONSTRUCTION COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.* Rates on paving brick from Murphysboro, Ill., to Helena, Ark. *W. B. Satterfield* for complainant. *F. G. Wright* and *C. C. P. Rausch* for defendant. Dismissed on motion of complainant, March 3, 1914.

5963. *SIMMONS HARDWARE COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Rates on tinware, stamped ware, and coffee

mills from St. Louis, Mo., to Salt Lake City, Utah. *O. Van Brunt* for complainant. *H. G. Herbel* and *F. G. Wright* for defendants. Dismissed on motion of complainant, January 5, 1914.

6050. OTIS MANUFACTURING COMPANY *v.* LOUISVILLE & NASHVILLE RAILROAD COMPANY. Rates on wood paneling from Louisville, Ky., to New Orleans, La. *G. M. Stephen* for complainant. *W. A. Colston* and *W. Burger* for defendant. Dismissed on motion of complainant, January 5, 1914.

6070. AMERICAN LUMBER & MANUFACTURING COMPANY *v.* GULF & SHIP ISLAND RAILROAD COMPANY ET AL. Rates on yellow-pine lumber from Sanford, Miss., to Holly Junction, W. Va. *C. A. Droz* for complainant. *A. Fries* for defendants. Dismissed on motion of complainant, February 3, 1914.

6084. SOUTHWESTERN MISSOURI MILLERS' CLUB *v.* MISSOURI PACIFIC RAILWAY COMPANY ET AL. Rates on grain and grain products from points in Missouri through St. Louis gateway to points east of the Mississippi River. *W. H. Marshall* for complainant. *J. M. Bryson*, *C. S. Burg*, *M. L. Clardy*, *H. G. Herbel*, *F. G. Wright*, and *T. Bond* for defendants. Dismissed without prejudice on motion of complainant, February 9, 1914.

6093. CARROLL BROTHERS *v.* CHICAGO GREAT WESTERN RAILROAD COMPANY ET AL. Rates on household goods and immigrant movables from Hansell, Iowa, to Rock Springs, Wyo. No appearance for complainant. *G. H. Smith* for Union Pacific Railroad Company. Complaint satisfied. Dismissed January 12, 1914.

6098. RAILROAD COMMISSIONERS OF SOUTH DAKOTA *v.* CHICAGO MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rates on coal from Lake Superior and Lake Michigan ports and points in other states to points in South Dakota. *R. C. Johnson* and *P. W. Dougherty* for complainant. *W. L. Louis*, *Glennon*, *Cary*, *Walker & Howe*, *O. E. Butterfield*, *C. Brown*, *W. J. Warr*, *W. H. Bremner*, *F. M. Miner*, *A. P. Humburg*, *R. V. Fletcher*, *C. C. Wright*, *Robert H. Widdicombe*, *O. W. Dynes*, *J. M. Elliott*, *R. B. Scott*, *John H. Finerty, jr.*, *J. B. Sheean*, *E. H. Seneff*, *C. B. Cardy*, and *W. F. Dickinson* for defendants. Dismissed on motion of complainant, January 12, 1914.

6120. MCKEEN MOTOR CAR COMPANY *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL. Rate on gasoline motor car on its own wheels and under its own power from Muskogee, Okla., to Omaha, Nebr. *C. B. Matthai* for complainant. *H. A. Scandrett* for Union Pacific Railroad Company. Dismissed on motion of complainant, January 12, 1914.

6169. ANDERSON-TULLY COMPANY *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY. Rates on cottonwood box material from Memphis, Tenn., to Lockwood, Mo. *G. M. Stephen* and *S. J. Bolton*
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for complainant. *T. Bond* for defendant. Dismissed on motion of complainant, March 3, 1914.

6193. NORTH AMERICAN STORAGE COMPANY *v.* WESTERN EXPRESS COMPANY. Rates on milk and cream from points in North Dakota to Alexandria and Paynesville, Minn. *Watson & Abernethy* for complainant. *W. H. Burr* for defendant. Dismissed without prejudice on motion of complainant, March 3, 1914.

6257. BERNOWER LUMBER COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY. Demurrage charges on shipment of lumber from Albany Falls, Idaho, to Canton, Ohio. *R. E. O'Brien* for complainant. *W. C. Coleman* for defendant. Dismissed January 5, 1914.

6282. TRAFFIC BUREAU OF KNOXVILLE, TENNESSEE *v.* ALABAMA & VICKSBURG RAILWAY COMPANY ET AL. Rates on spreader cars. *C. Kimmich* for complainant. *E. D. Kyle*, *A. P. Humburg*, *R. V. Fletcher*, *R. W. Moore*, and *T. Bond* for defendants. Dismissed on motion of complainant, January 5, 1914.

6308. 20TH CENTURY MACHINERY COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Rate on bottle-soaking machine from Milwaukee, Wis., to Pine Bluff, Ark. *O. M. Rogers* for complainant. *O. W. Dynes*, *M. L. Clardy*, *H. G. Herbel*, and *F. G. Wright* for defendants. Dismissed on motion of complainant, February 3, 1914.

6335. KANSAS CITY TEAM OWNERS' ASSOCIATION ET AL. *v.* CHICAGO GREAT WESTERN RAILROAD COMPANY ET AL. Tailboard delivery at Kansas City, Mo. *Pierson & Shertz* for complainants. *T. Bond*, *Winston*, *Payne*, *Strawn & Shaw*, *J. M. Bryson*, *C. S. Burg*, *J. M. Souby*, *N. H. Loomis*, *H. A. Scandrett*, *Brown & Eastin*, *W. F. Dickinson*, *M. L. Clardy*, *H. G. Herbel*, and *F. G. Wright* for defendants. Dismissed on motion of complainant, March 3, 1914.

6355. ANDERSON-TULLY COMPANY *v.* YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY ET AL. Rates on cotton wood lumber from Vicksburg, Miss., and Memphis, Tenn., to New Castle and Richmond, Ind. *S. J. Bolton* for complainant. *C. D. Drayton* and *F. G. Wright* for defendants. Dismissed without prejudice on motion of complainant, March 3, 1914.

6370. BUDA COMPANY *v.* HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY ET AL. Rates on steel railroad crossings from Harvey, Ill., to Houston, Tex. *G. M. Stephen* for complainant. *A. P. Humburg*, *R. V. Fletcher*, *E. A. Haid*, and *S. H. West* for defendants. Dismissed on motion of complainant, January 5, 1914.

6372. FARMERS GRAIN & MERCANTILE COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL. Through routes and joint rates on coarse grain from Kirkman, Iowa, to Kansas City, Mo. *J. H. Henderson* and *D. N. Lewis* for complainant. *R. B. Scott*, *R. H.*

Widdicombe, and *C. C. Wright* for defendants. Dismissed on motion of complainant, March 3, 1914.

6388. REMINGTON TYPEWRITER COMPANY (INC.) *v.* WEST SHORE RAILROAD COMPANY. Rates on typewriters from Ilion, N. Y., to New York, N. Y. *O. E. Butterfield* for defendant. Dismissed on motion of complainant, March 3, 1914.

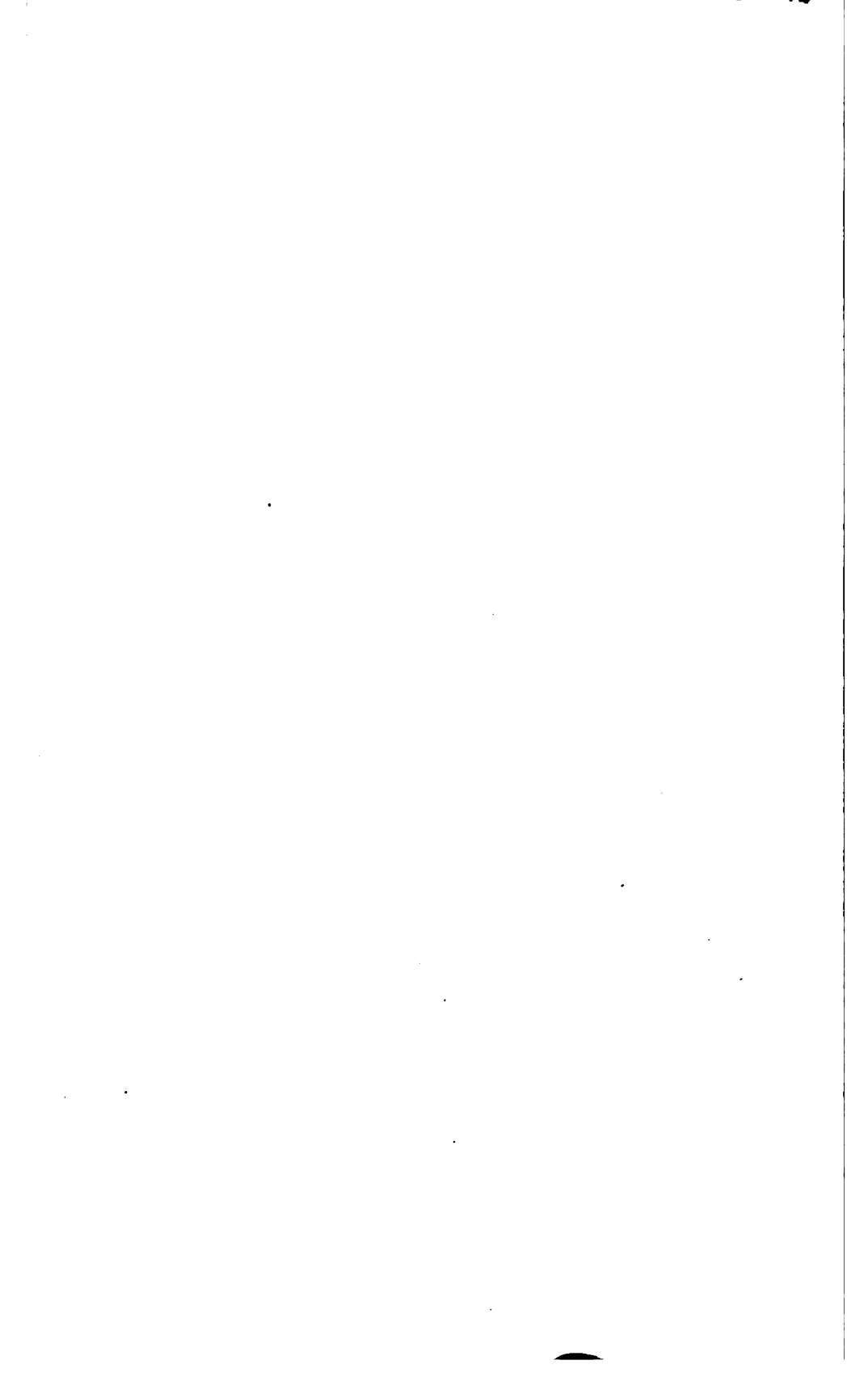
6424. JOBBERS BROKERAGE COMPANY *v.* CHESAPEAKE & POTOMAC TELEPHONE COMPANY. Telephone rates from Cumberland, Md., to Keyser and Piedmont, W. Va. *S. Praeger* for complainant. No appearance for defendant. Dismissed on motion of complainant, February 3, 1914.

6442. AUGUSTA BARGE LINE COMPANY *v.* OCEAN STEAMSHIP COMPANY OF SAVANNAH ET AL. Establishment of through routes and joint rates. *R. J. Southall* for complainant. *T. H. Burgess*, *M. B. Pierce*, *F. L. Ballard*, *H. W. Bickel*, *G. S. Patterson*, and *R. W. Moore* for defendants. Dismissed on motion of complainant, February 3, 1914.

6457. SCATTERGOOD & COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Diversion charge on shipment of bran from Minneapolis, Minn., to Middlefield, Conn. *W. B. Scattergood* for complainant. *O. E. Butterfield*, *S. S. Perry*, and *O. W. Dynes* for defendants. Dismissed on motion of complainant, March 3, 1914.

6478. HALE-MYLREA LUMBER COMPANY *v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY. Rates on coal from Escanaba, Mich., to Long Lake, Wis. *J. D. Mylrea* for complainant. *C. C. Wright* and *R. H. Widdicombe* for defendant. Dismissed on motion of complainant, March 3, 1914.

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REPARATION CASES DISPOSED OF BY THE COMMISSION IN
FORMAL BUT UNREPORTED DECISIONS DURING THE TIME
COVERED BY THIS VOLUME.

5202 (U. R. No. A-401). **SIoux CITY BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.** Mis-routing beer from Sioux City, Iowa, to Herried, S. Dak., and empty beer containers from Herried to Sioux City. *G. T. Bell* for complainant. *G. A. Kingsley* for defendants. December 1, 1913. Reparation awarded for (total) \$328.11.

5816 (U. R. No. A-402). **HANLEY BROTHERS COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.** Unreasonable rates on peaches from Orchard Siding, Ark., to Beloit, Wis. *G. M. Stephen* for complainant. *O. W. Dynes* for defendants. December 1, 1913. Reparation awarded for \$100.

5497 (U. R. No. A-403). **EAST DUBUQUE SUPPLY COMPANY ET AL. v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.** Increased rates on beer from East Dubuque, Ill., to points in Iowa not shown to be unjustly discriminatory. *W. B. Martin* for complainants. *A. P. Humburg* for defendants. December 1, 1913. Complaint dismissed.

5782 (U. R. No. A-404). **YELLOW PINE COMPANY OF PHILADELPHIA ET AL. v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.** Reparation asked on lumber from points in North Carolina, South Carolina, and Georgia to Newport News, Va., disallowed. *J. R. Walker* for complainants. *C. J. Rizey, jr.*, and *R. W. Moore* for defendants. December 1, 1913. Complaint dismissed.

4771 (U. R. No. A-405). **NATIONAL PETROLEUM ASSOCIATION v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.** Increases in rates on petroleum and its products from Kansas refining points to points in Alabama and Mississippi found to have been justified. *C. D. Chamberlin* for complainant. *T. J. Norton*, *D. L. Meyers*, *H. G. Herbel*, *F. G. Wright*, *W. F. Dickinson*, *F. H. Wood*, *J. M. Bryson*, and *C. S. Burg* for defendants. December 1, 1913. Complaint dismissed.

5624 (U. R. No. A-406). **AMERICAN TERRA COTTA & CERAMIC COMPANY v. VANDALIA RAILROAD COMPANY ET AL.** Increases in rates on clay, shale, chuck, and bitten from Brazil and Center Point, Ind., to Terra Cotta, Ill., found to have been justified. *I. W. Prectorius*

for complainant. *C. B. Sudborough, A. P. Humburg, and R. H. Widcombe* for defendants. December 3, 1913. Complaint dismissed.

5662 (U. R. No. A-407). MINNESOTA STOVE COMPANY *v.* MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY ET AL. Rates on pig iron from Manistique, Mich., to Shakopee, Minn., found to have been justified. *C. W. Nye* for complainant. *K. Taylor, J. N. Davis, W. D. Burr, and J. B. Sheean* for defendants. December 3, 1913. Complaint dismissed.

3309 and 5165 (U. R. No. A-408). MEMPHIS GRAIN & HAY ASSOCIATION *v.* ANN ARBOR RAILROAD COMPANY ET AL. MEMPHIS MERCHANTS EXCHANGE *v.* TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY ET AL. Rates on hay from points in central freight association territory to Memphis, Tenn., found to have been justified. *C. B. Stafford and E. E. Williamson* for complainants. *D. P. Connell, R. W. Moore, N. W. Proctor, F. G. Wright, S. L. Strauss, R. P. Paterson, and E. Morris* for defendants. December 3, 1913. Complaints dismissed.

5381 (U. R. No. A-409). DIANA PAPER COMPANY *v.* NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL. Rates on waste paper and iron cores from Chicago, Ill., to Harrisville, N. Y., not found unreasonable. *Carlisle & Carlisle* for complainant. *W. W. Collin, jr.*, for defendants. December 3, 1913. Complaint dismissed.

4916 (U. R. No. A-410). NATIONAL PETROLEUM ASSOCIATION *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL. Rates on petroleum and its products from points in Kansas and Oklahoma to points in Minnesota not found unreasonable. *C. D. Chamberlin* for complainant. *T. J. Norton, D. L. Meyers, J. N. Davis, F. H. Wood, and F. C. Dumbeck* for defendants. December 1, 1913. Complaint dismissed.

5479 (U. R. No. A-411). ATTWOOD COMPANY *v.* NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY. Unreasonable rates on pine lumber from Bridgeport, Ala., to stations of defendants. *J. R. Walker* for complainant. *R. W. Moore* for defendant. January 12, 1914. Reparation to be awarded upon presentation of proper proof.

5692 (U. R. No. A-412). SCATTERGOOD & COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL. Reconsignment and demurrage charges on bran shipped from Davenport, Iowa, to New York, N. Y., and rules governing holding and diversion of grain at Harlem River, N. Y., not found unreasonable. *W. T. Porch* for complainant. *G. J. Lincoln, H. W. Bikle, S. S. Perry, and Bruce Wyman* for defendants. December 1, 1913. Complaint dismissed.

5639 and 5639 (Sub-No. 1) (U. R. No. A-413). MILLER BROTHERS *v.* MISSOURI PACIFIC RAILWAY COMPANY ET AL. Rates on cattle from

points in Louisiana to points in Missouri and Illinois not found unreasonable. *W. H. England* and *C. B. Bee* for complainant. *F. G. Wright*, *M. L. Clardy*, and *H. G. Herbel* for defendants. December 1, 1913. Complaint dismissed.

5344 (U. R. No. A-414). *METROPOLIS LUMBER COMPANY ET AL. v. LONG ISLAND RAILROAD COMPANY*. Demurrage and track-storage charges at Brooklyn, N. Y., not found unreasonable. *I. M. Silberman* for complainants. *C. L. Addison* for defendant. December 1, 1913. Complaint dismissed.

5332 (U. R. No. A-415). *HARTZELL v. CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.* Fourth Section Application No. 2072. Certain rates on logs from Eleanor and Surrey, Ill., to Piqua, Ohio, found unreasonable and reparation awarded; certain rates on logs from other points in Illinois to Piqua not found unreasonable; application for relief under the fourth section granted. *G. M. Stephen* for complainant. *A. P. Humburg*, *R. B. Scott*, *W. J. Stevenson*, *J. G. Williams*, *H. R. Griswold*, *D. L. Meyers*, *J. L. Coleman*, *H. E. Watts*, *F. B. Townsend*, and *W. H. Bremner* for defendants. December 3, 1913. Reparation awarded for (total) \$219.07.

4779 and 5313 (U. R. No. A-416). *POWELL FUEL COMPANY ET AL. v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* *SPROLES v. SEABOARD AIR LINE RAILWAY ET AL.* Unreasonable rates on coal from Jellico, Tenn., to Greenwood, S. C. *Rembert & Montieth* and *J. A. Johnston* for complainants. *J. B. Wright*, *N. W. Proctor*, *C. B. Northrup*, *A. M. Bull*, and *F. W. Gwathmey* for defendants. December 1, 1913. Reparation awarded for \$9.56.

5774 (U. R. No. A-417). *MILLER & COMPANY v. GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.* Rates on potatoes from Attica, Mich., to South Chicago, Ill., not unlawful. *J. E. Robinson* for complainant. *G. W. Kretzinger, jr.*, for defendants. December 1, 1913. Complaint dismissed.

6479 (U. R. No. A-418). *ACME WHITE LEAD & COLOR WORKS ET AL. v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.* Unjustly discriminatory rates on certain commodities from eastern points to Spokane, Wash. No appearances. January 12, 1914. Reparation to be awarded upon presentation of proper proof.

5377 (U. R. No. A-419). *MOGENSON-WELLS COMPANY v. ERIE RAILROAD COMPANY ET AL.* Rates on thermos bottles from New York, N. Y., to San Francisco, Cal., not found unreasonable. *J. O. Bracken* for complainant. *T. J. Norton*, *E. W. Camp*, and *P. P. Hastings* for defendants. December 3, 1913. Complaint dismissed.

5835 (U. R. No. A-420). *NATIONAL REFINING COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Unreasonable rates on petroleum and its products from Coffeyville, Kans.,

to Springfield, Ill. *C. D. Chamberlin* for complainant. *J. M. Bryson, C. S. Burg, T. J. Norton, D. L. Meyers, and F. G. Wright* for defendants. December 8, 1913. Reparation denied.

5952 (U. R. No. A-421). *BAARNARD COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY*. Unreasonable rates on moss from Mather, Wis., to Chicago, Ill. *O. M. Rogers* for complainant. *J. N. Davis* for defendant. January 6, 1914. Reparation awarded for \$89.32.

5258 (U. R. No. A-422). *LEE COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.* Unreasonable rates on incubators and brooders from Omaha, Nebr., to Cairo, Ill.; failure to provide for mixed carload privilege on incubators, brooders, and advertising matter. *C. E. Childe* for complainant. *A. P. Humburg, C. D. Drayton, R. C. Fyfe, and W. R. Powe* for defendants. January 6, 1914. Reparation awarded for \$76.43.

6037 (U. R. No. A-423). *WELISCH & COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.* Misrouting rice shipped from De Witt, Ark., to Portland, Oreg. *W. R. Wheeler* for complainant. *G. D. Squires* for defendants. January 6, 1914. Reparation awarded for \$112.28.

3885 (U. R. No. A-424). *MEMPHIS FREIGHT BUREAU ET AL. v. UNITED STATES EXPRESS COMPANY*. Rates on peas and beans from Memphis, Tenn., to Kansas City, Mo., not found unreasonable. *J. S. Davant* for complainant. *F. W. Bellamy* for defendant. January 6, 1914. Refund of overcharge of \$42.36 allowed.

5679 (U. R. No. A-425). *ISEBELL-BROWN COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.* Unreasonable rates on dried beans from River Junction, Mich., to Jacksonville, Fla. *W. N. Isbell* for complainant. No appearance for defendants. January 6, 1914. Reparation awarded for \$14.44.

5682 (U. R. No. A-426). *FOSTER LUMBER COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Misrouting fence posts shipped from Hermansville, Mich., to Long Island, Kans. *G. F. Morris* for complainant. *A. F. Cleveland* for defendants. January 6, 1914. Reparation awarded for \$7.53.

5874 (U. R. No. A-427). *COX v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Unreasonable rates on cattle from Texhoma, Okla., to Emporia, Kans. *W. M. Smelser* for complainant. *W. T. Hughes and D. L. Meyer* for defendants. January 6, 1914. Reparation awarded for \$52.78.

5539 (U. R. No. A-428). *KROLL LUMBER COMPANY v. GREAT NORTHERN RAILWAY COMPANY ET AL.* Unlawful rates on lumber from Kulzer, Wash., to Dickinson, N. Dak. *L. E. Gandy* for com-

plainant. *T. Balmer* for defendants. January 6, 1914. Reparation awarded for \$24.52.

5829 (U. R. No. A-429). KANSAS CITY EGG CASE FILLER COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY. Unreasonable rates on strawboard from Tama, Iowa, to Kansas City, Mo. *H. G. Wilson* for complainants. *J. S. Adsit* for defendant. January 6, 1914. Reparation awarded for \$220.78.

5887 (U. R. No. A-430). DILKES & COMPANY *v.* BALTIMORE & OHIO RAILROAD COMPANY ET AL. Unreasonable charges for loading and trimming phosphate rock into cars at Locust Point, Md. *J. B. Daish* for complainant. *W. A. Parker* for defendants. January 6, 1914. Reparation awarded for \$730.79.

5930 (U. R. No. A-431). BRENNER LUMBER COMPANY *v.* VIRGINIA & SOUTHWESTERN RAILWAY COMPANY ET AL. Unreasonable rates on lumber from McCains, Tenn., to Thomasville, N. C. *J. R. Walker* for complainant. *A. M. Bull* for defendants. January 6, 1914. Reparation awarded for \$30.64.

5785 (U. R. No. A-432). BOYLE COMMISSION COMPANY *v.* OREGON SHORT LINE RAILROAD COMPANY ET AL. Unreasonable rates on dried beans from Twin Falls, Idaho, to Denver, Colo. *Holmes, Yankey & Holmes* for complainant. *P. L. Williams, N. H. Loomis, H. A. Scandrett,* and *L. T. Wilcox* for defendants. January 6, 1914. Reparation awarded for \$100.

5681 and 5681 (Sub-No. 1) (U. R. No. A-433). MAHAFFEY COMPANY *v.* GREAT NORTHERN RAILWAY COMPANY ET AL. STARKS COMPANY *v.* MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY ET AL. Fourth Section Application Nos. 693, 699, and 4219. Rates on potatoes from points in Minnesota and Wisconsin to points in Arkansas not found unreasonable. Fourth section applications denied. *M. W. Kaveney* for complainants. *A. F. Cleveland* and *F. G. Wright* for defendants. December 1, 1913. Complaints dismissed.

5730 (U. R. No. A-434). WELLS LUMBER COMPANY *v.* GULF & SHIP ISLAND RAILROAD COMPANY ET AL. Fourth Section Application No. 484. Unreasonable rates on lumber from Lumberton, Miss., to Webster Groves, Mo. Fourth section application denied. *R. W. Hall* for complainant. *R. W. Moore, A. P. Humburg, F. G. Wright,* and *H. G. Herbel* for defendants. December 8, 1913. Reparation awarded for \$10.82.

5872 (U. R. No. A-435). ARKANSAS SHORT LEAF LUMBER COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL. Unreasonable rates on lumber from Pine Bluff, Ark., to Success, Ark. *W. R. Thurmond* for complainant. *O. C. P. Rausch* and

T. Bond for defendants. January 6, 1914. Reparation awarded for \$134.97.

5675 (U. R. No. A-436). *DANT & RUSSELL v. GILMORE & PITTSBURGH RAILROAD COMPANY*. Unreasonable minimum carload weights on shingles from Armstead, Mont., to Salman, Idaho. *C. S. Russell* for complainant. *W. A. McCutcheon* for defendant. January 6, 1914. Reparation denied.

5627 (U. R. No. A-437). *WARFIELD-PRATT-HOWELL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY*. Unreasonable rates on sauerkraut from Olivia, Minn., to Sioux City, Iowa. *G. T. Bell* for complainant. *O. W. Dynes* for defendant. January 6, 1914. Reparation awarded for \$15.12.

4534 (U. R. No. A-438). *STANDARD OIL COMPANY v. MINNEAPOLIS ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY ET AL.* Rates on construction material for steel tanks from Leetsdale, Pa., to Superior, Wis., not found unlawful. *E. Bogardus* for complainant. *J. Stillwell, A. F. Cleveland, and F. S. Hollands* for defendants. January 6, 1914. Complaint dismissed.

6041 (U. R. No. A-439). *MITCHELL, LEWIS & STAVELAND COMPANY v. SOUTHERN PACIFIC COMPANY*. Unreasonable rates on weeder blades from Ventura, Cal., to Portland, Oreg. *W. C. McCullough* for complainant. *B. C. Dey* for defendant. January 6, 1914. Reparation awarded for \$23.57.

6064 (U. R. No. A-440). *SQUIRE DINGEE COMPANY v. CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY ET AL.* Unreasonable rates on second-hand empty tight barrels from St. Louis, Mo., to Chicago, Ill. *F. H. Curran* for complainant. *C. B. Cardy* for defendants. January 6, 1914. Reparation awarded for \$10.68.

6006 (U. R. No. A-441). *ROBINSON CLAY PRODUCT COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.* Unreasonable rates on fire brick from Parral, Ohio, to Keegan, Me. *A. Hill* for complainant. *A. J. Anderson* for defendants. January 6, 1914. Reparation awarded for \$8.38.

4938 (U. R. No. A-442). *TUSTEN SEED & PRODUCE COMPANY v. VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rates on onions, peas, and beans from St. Louis, Mo., and points in central freight association territory to Shreveport, La. *G. M. Stephen* for complainant. *F. W. Gwathmey, R. D. Coleman, and J. Stillwell* for defendants. January 6, 1914. Reparation awarded for \$39.55.

5823 (U. R. No. A-443). *EASTERN TALC COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Unduly prejudicial rates on ground talc from East St. Louis, Ill., to Kansas City, Mo. *J. M.*

Gibbs for complainant. *F. G. Wright, M. L. Clardy, and H. G. Herbel* for defendants. January 6, 1914. Reparation denied.

5520 (U. R. No. A-444). *GILL COMPANY v. OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.* Unreasonable rates on mimeographs and neostyles from Chicago, Ill., to Portland, Oreg. *E. M. Cousin* for complainant. *A. C. Spencer* for defendants. January 6, 1914. Reparation awarded for \$1.05.

6033 (U. R. No. A-445). *CENTRAL COMMERCIAL COMPANY v. DELAWARE & HUDSON COMPANY ET AL.* Unduly prejudicial rates on crushed slate from Poultney, Vt., to points in central freight association territory. *G. E. Hutchinson* for complainant. *J. E. MacLean* and *J. Cameron* for defendants. January 6, 1914. No reparation.

6137 (U. R. No. A-446). *ROCKFORD LUMBER & FUEL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Unreasonable rates on fuel wood from Wells, Mich., to Rochelle, Ill. *C. S. Bather* for complainant. *O. W. Dynes* for defendants. January 6, 1914. Reparation awarded for \$15.37.

5775 (U. R. No. A-447). *GULF LUMBER COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.* Unreasonable rates on rails and fastenings from Winona, Mo., to Leesville, La. *R. W. Hall* for complainant. *F. H. Wood* for defendants. December 1, 1913. Reparation awarded for \$239.83.

5941 (U. R. No. A-448). *TENNESSEE LUMBER MANUFACTURING COMPANY v. BEAVER DAM RAILROAD COMPANY ET AL.* Rates on rails, frogs, switches, splices, spikes, second-hand machinery, and scrap iron from Sutherland, Tenn., to points in Virginia, Tennessee, Alabama, North Carolina, Ohio, and Pennsylvania not found unreasonable. *Woodbury & Woodbury* for complainant. *C. J. Rixey, jr.,* and *E. P. Kinzell* for defendants. December 1, 1913. Complaint dismissed.

5435 (U. R. No. A-449). *ST. JOHN & COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.* Rates on hay from Odessa and Elm Creek, Nebr., to Superior, Wis., not found unreasonable. *J. A. Little* for complainant. *W. D. Burr* for defendants. December 1, 1913. Complaint dismissed.

5215 (U. R. No. A-450). *CHATTANOOGA SEWER PIPE & FIRE BRICK COMPANY v. ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.* Unreasonable rates on earthen sewer pipe from Birmingham, Ala., to Lake Charles, La. *R. B. Shepherd* for complainant. *J. G. Wilson, J. P. Blair, H. A. Scandrett, and M. C. Hall* for defendants. December 3, 1913. Reparation to be awarded on presentation of proper proof.

5322 (U. R. No. A-451). *WRIGHT ET AL. v. CHICAGO & NORTH WESTERN RAILWAY COMPANY.* Undue discrimination in preferring
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branch-line points to main-line points in supplying cars, but no damage shown. *A. Watson* for complainants. *C. C. Wright* and *R. H. Widdicombe* for defendant. December 3, 1913. Complaint dismissed.

5611 (U. R. No. A-452). *SALINA PRODUCE COMPANY v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Rates on kaffir corn from Concordia, Kans., to Osborne, Kans., not found unreasonable. *E. H. Hogueland* for complainant. *M. L. Clardy, H. G. Herbel, and Fred G. Wright* for defendants. December 3, 1913. Complaint dismissed.

5256 (U. R. No. A-453). *ALLEN & LEWIS ET AL. v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.* Rates on candy from points east of the Missouri River to Portland, Oreg., not found unreasonable. *Teal, Minor & Winfree* and *W. C. McCulloch* for complainants. *Carey & Kerr, C. A. Hart, W. A. Robbins, H. A. Scandrett, J. G. Wilson, and A. C. Spencer* for defendants. December 3, 1913. Complaint dismissed.

6005 (U. R. No. A-454). *STANDARD GRAIN AND MILLING COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.* Unreasonable rates on grain screenings from New Ulm, Minn., to Kansas City, Mo. *J. E. Johnston* for complainant. *A. F. Cleveland* for defendants. January 6, 1914. Reparation awarded for \$216.05.

4069 and 4069 (Sub-Nos. 1, 2, 3, and 4) (U. R. No. A-455). *CADDO RIVER LUMBER COMPANY v. CADDO & CHOCTAW RAILROAD ET AL. CALCASIEU LONG LEAF LUMBER COMPANY v. LOUISIANA & PACIFIC RAILWAY COMPANY ET AL. LUFKIN LAND & LUMBER COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS ET AL. HUDSON RIVER LUMBER COMPANY v. LOUISIANA & PACIFIC RAILWAY COMPANY ET AL. KING-RYDER LUMBER COMPANY v. LOUISIANA & PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rates on lumber from points in Arkansas, Louisiana, and Texas to points in western Nebraska and Kansas. *W. R. Thurmond* for complainants. *C. C. P. Rausch, T. Bond, and G. W. Hamilton* for defendants. January 12, 1914. Reparation awarded for (total) \$159.15.

5287 (U. R. No. A-456). *CORNIE STAVE COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.* Concentration regulations on the rough material inbound to Junction City, Ark., and on the barrel staves outbound from that point not found unreasonable. *G. F. Thomas* for complainant. *W. F. Dickinson* and *W. T. Hughes* for defendant. December 8, 1913. Complaint dismissed.

5513 (U. R. No. A-457). *BESSEMER REFINING COMPANY v. PENNSYLVANIA COMPANY ET AL.* Rates on crude petroleum from Columbian, Ohio, to Titusville, Pa., not found unreasonable. *C. D.*

Chamberlin for complainant. *A. P. Burgwin* and *L. E. Hinkle* for defendants. December 8, 1913. Complaint dismissed.

5640 (U. R. No. A-458). *COWEN HEINEBERG COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Unreasonable rates on cigars from San Francisco, Cal., to New York, N. Y. *Brown & Baer* for complainant. *E. W. Kemp* for defendants. November 4, 1913. Reparation awarded for \$436.23.

5732 (U. R. No. A-459). *SCRANTON & LEHIGH COAL COMPANY v. LEHIGH VALLEY RAILROAD COMPANY.* Demurrage charges on coal at Brooklyn, N. Y., not found unlawful. *J. B. Daish* for complainant. *Parsons, Classon & McIlwaine, H. Barney,* and *R. W. Barrett* for defendant. January 6, 1914. Complaint dismissed.

5808 (U. R. No. A-460). *DIERKS v. SOUTHERN PACIFIC COMPANY ET AL.* Unreasonable fares for transporting three passengers from San Francisco, Cal., to Lincoln, Nebr. *J. S. Kirkpatrick* for complainant. *A. G. Little* for defendants. January 6, 1914. Reparation awarded for \$128.10.

5615 and 5615 (Sub-Nos. 1, 2, and 3) (U. R. No. A-461). *SPOKANE CYCLE & SUPPLY COMPANY v. SPOKANE INTERNATIONAL RAILWAY COMPANY ET AL.* Unreasonable rates on motorcycles from Springfield, Mass., to Spokane, Wash. *L. E. Gandy* for complainant. *F. D. Allen* for defendants. January 12, 1914. Reparation awarded for (total) \$1,045.25.

5945 (U. R. No. A-462). *MILLER & COMPANY v. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY ET AL.* Rates on potatoes from North Branch, Minn., to Alton, Ill., not found unreasonable. *J. E. Robinson* for complainants. *R. H. Widdicombe* for defendants. January 6, 1914. Complaint dismissed.

5790 (U. R. No. A-463). *FEEDERS' SUPPLY COMPANY v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS ET AL.* Rates on cottonseed cake from Bartlett, Tex., to Burns and Burdick, Kans., not found unreasonable. *J. L. Whittington* for complainants. *W. W. Miller, B. F. E. Marsh,* and *H. L. McReynolds* for defendants. January 6, 1914. Complaint dismissed.

5751 (U. R. No. A-464). *DEAN ELECTRIC COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.* Rates on tuto and rexo horns from Elyria, Ohio, to San Francisco, Cal., not found unreasonable. *Winn, Bell & Bishop* for complainant. *T. J. Norton, H. A. Scandrett, C. C. Wright, O. W. Dynes, W. F. Herrin, C. W. Durbrow,* and *J. G. Wilson* for defendants. January 6, 1914. Complaint dismissed.

5720 (U. R. No. A-465). *VALLEY LUMBER & TIMBER COMPANY v. WESTERN MARYLAND RAILWAY COMPANY ET AL.* Unreasonable rates on crossties from Mill Creek, Kerns, and Purshall, W. Va., to
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Broadford Junction, Pa. *J. E. Williams* for complainant. No appearance for defendants. January 6, 1914. Reparation to be awarded on presentation of proper proof.

5164 (U. R. No. A-466). *INTER-MOUNTAIN AUTO COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.* Misrouting automobiles from Minnesota Transfer, Minn., to Boise, Idaho. *O. M. Rogers* for complainant. *W. T. Hughes, W. J. Stevenson, and L. T. Wilcox*, for defendants. January 6, 1914. Reparation denied.

4968 (U. R. No. A-467). *SCHERMERHORN BROTHERS COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.* Rates on wicking from Madison, Ind., to Birmingham, Ala., and Ottumwa, Iowa, and from Boston, Mass., to Chicago, Ill., not found unreasonable. *G. M. Stephen* for complainants. *J. Stillwell, O. E. Butterfield, F. W. Gwathmey, W. A. Northcutt, O. W. Dynes, W. T. Hughes, R. B. Scott, and C. D. Drayton* for defendants. January 6, 1914. Complaint dismissed.

5670 (U. R. No. A-468). *WESTERN ROCK SALT COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Rates on rock salt from Lyons, Kans., to Texas points not found unreasonable. *C. H. Rodehaver* for complainant. *J. S. Hershey, C. D. Burg, and C. W. Owen* for defendants. January 6, 1914. Complaint dismissed.

5612 (U. R. No. A-469). *WOODS-EVERTZ STOVE COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.* Rates on stoves from Springfield, Mo., to Shawnee, Okla., not found unreasonable. *S. C. Bates* for complainant. *W. T. Hughes* for defendants. January 6, 1914. Complaint dismissed.

5590 (U. R. No. A-470). *BIGHAM & ROSE v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.* Rates on beef cattle from El Paso, Tex., to Oklahoma City, Okla., not found unreasonable. *W. B. Stickney and W. B. Bee* for complainants. *F. G. Wright and J. W. Allen* for defendants. January 6, 1914. Complaint dismissed.

5586 (U. R. No. A-471). *BARTLESVILLE SUPPLY COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Rates on iron sucker rods and iron tubing from Keystone, Ind., to Bartlesville, Okla., not found unreasonable. *G. I. Van Dall* for complainant. No appearance for defendants. January 6, 1914. Complaint dismissed.

5547 (U. R. No. A-472). *CHANSLOB & LYON MOTOR SUPPLY COMPANY ET AL. v. PENNSYLVANIA RAILROAD COMPANY ET AL.* Rates on electrical warning signals from Newark, N. J., to San Francisco, Cal., not found unreasonable. *J. O. Bracken* for complainants.

E. W. Camp, G. D. Squires, R. C. Fyfe, and A. P. Matthew for defendants. January 6, 1914. Complaint dismissed.

4463 (U. R. No. A-473). *FISH & SOLOMON v. PENNSYLVANIA RAILROAD COMPANY*. Rehearing asked by complainants of former decision (U. R. No. A-99). *A. Schlesinger* for complainants. No appearance for defendant. January 6, 1914. Petition denied.

3722 (U. R. No. A-474). *TYLER GROCERY COMPANY v. SOUTHERN EXPRESS COMPANY ET AL.* Rates on paper cartons from New York, N. Y., to Birmingham, Ala., not found unreasonable. *T. J. Slatter* for complainant. *J. D. Patterson, jr., and T. B. Harrison, jr.,* for defendants. January 6, 1914. Complaint dismissed.

6095 (U. R. No. A-475). *DALLAS LUMBER & LOGGING COMPANY v. SOUTHERN PACIFIC COMPANY*. Rates on lumber from Dallas, Oreg., to Weed, Cal., not found unreasonable. *W. C. McCulloch* for complainant. *B. C. Dey* for defendant. January 6, 1914. Complaint dismissed.

6139 (U. R. No. A-476). *PENCE & BROTHER v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.* Complaint in reference to shipment of hogs from Fisherville, Va., to Baltimore, Md., barred by statute of limitations. *J. R. Hoover* for complainants. *W. S. Bronson* for defendants. January 6, 1914. Complaint dismissed.

5954 (U. R. No. A-477). *EAKLE LUMBER COMPANY v. NORFOLK & WESTERN RAILWAY COMPANY ET AL.* Rates on telegraph poles from Lyndhurst, Va., to Dunwoodie, N. Y., not found unreasonable. *J. R. Hoover* for complainant. *M. C. Hall* for defendants. January 6, 1914. Complaint dismissed.

4716 (U. R. No. A-478). *MILLER BROTHERS v. OREGON SHORT LINE RAILROAD COMPANY ET AL.* Claim for reparation on shipment of wheat from Ashton, Idaho, to Springfield, Mo., barred by statute of limitations. *A. B. Hayes* for complainant. *T. Littlepage* for defendants. January 6, 1914. Complaint dismissed.

4784 (U. R. No. A-479). *PALEN & BURNS v. LEHIGH VALLEY RAILROAD COMPANY ET AL.* Claim for reparation on shipments of coal from Audenried and Wyoming, Pa., to Milwaukee, Wis., barred by statute of limitations. *M. S. Burns* for complainants. *F. H. Moser* for defendants. January 6, 1914. Complaint dismissed.

5607 (U. R. No. A-480). *WASHBURN-CROSBY MILLING COMPANY v. BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY*. Through rates on grain brought into and of the products carried out of Louisville, Ky., were not in accord with tariff. *F. Von Borries* for complainant. *W. W. Crawford* for defendant. October 13, 1913. Complaint to be dismissed when refund of overcharges is made.

5127 (U. R. No. 481). *SAWYER & AUSTIN LUMBER COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.*
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Overcharges on box shooks from Pine Bluff, Ark., to Fort Worth, Tex. *Danaher & Danaher* for complainant. *H. G. Herbel* and *F. G. Wright* for defendants. December 3, 1913. Complaint to be dismissed when refund of overcharges are made.

5519 (U. R. No. A-482). *CHAMBERLAIN CARTRIDGE & TARGET COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.* Interstate rates on targets and target traps from Cleveland and Findlay, Ohio, not found unreasonable. *Winn, Bell & Bishop* for complainant. *W. A. Parker* for defendants. December 8, 1913. Complaint dismissed.

5446 (U. R. No. A-483). *ORGILL BROTHERS & COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.* Rates on woven wire fencing from Adrian, Mich., to Memphis, Tenn., not found unjustly discriminatory. *G. M. Stephen* and *S. J. Bolton* for complainant. *W. A. Northcutt, R. W. Moore, F. W. Gwathmey, D. P. Connell, F. G. Wright,* and *E. R. Newman* for defendants. December 8, 1913. Complaint dismissed.

5741 (U. R. No. A-484). *BROWNE v. SOUTHERN RAILWAY COMPANY ET AL.* Unreasonable rates on lumber from Kennedy, Ala., to Cincinnati, Ohio. *H. R. Browne* for complainant. No appearance for defendants. January 6, 1914. Reparation to be awarded on presentation of proper proof.

5950 (U. R. No. A-485). *STANDARD OIL COMPANY v. PENNSYLVANIA COMPANY ET AL.* Rates on tank iron from Martinsville, Ill., to Whiting, Ind., not found unreasonable. *E. Bogardus* for complainant. *C. B. Sudborough* for defendants. January 6, 1914. Complaint dismissed.

5551 (U. R. No. A-486). *LONG & COMPANY v. ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.* Unreasonable rates on hogs from Springdale, Ark., to East St. Louis, Ill. *T. G. Long* for complainants. *B. R. Davidson* for defendant. January 6, 1914. Reparation to be awarded on presentation of proper proof.

5569 (U. R. No. A-487). *HOLT MANUFACTURING COMPANY v. OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.* Misrouting gas engines shipped from East Portland, Oreg., to Douglas, Wash., not shown by the record. *L. E. Gandy* for complainant. *W. S. Gilbert* and *T. Balmer* for defendants. January 12, 1914. Complaint dismissed.

5630 (U. R. No. A-488). *MEMPHIS FREIGHT BUREAU v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.* Rates on lumber from stations on the New Orleans Great Northern Railroad to Memphis, Tenn., not found unreasonable. *T. K. Riddick* for complainants. *M. C. Hall, R. W. Moore, F. D. McKenney, J. S. Flannery, W. Hitz,*

and *W. O. Carpenter* for defendants. January 12, 1914. Complaint dismissed.

5857 (U. R. No. A-489). *DORSCHER PRODUCE COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Rates on apples from Greenleaf, Wis., to Calumet, Mich., not found unreasonable. *P. F. Dorschel* for complainant. *J. N. Davis* for defendants. January 6, 1914. Complaint dismissed.

I. & S. 276 (U. R. No. A-490). *RATES ON BASKETS FROM POINTS EAST OF TO POINTS WEST OF THE MISSOURI RIVER.* Order of suspension to be vacated upon modification of tariffs. *W. S. Whitten* and *J. H. Henderson* for protestants. *C. C. P. Rausch, F. Smith, F. Montmorency, T. J. Norton,* and *A. A. Hurd* for respondents. February 2, 1914. No reparation.

4096 (U. R. No. A-491). *MIDDLEBURG STOVE COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.* Rates on grindstones from Berea, Ohio, to Freehold, N. J., not found unreasonable. *R. F. Mussey* for complainant. *S. H. Tolles* and *C. M. Buss* for defendants. February 2, 1914. Complaint dismissed.

4344 and 4451 (U. R. No. A-492). *BYRNES v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL. EVANS & COMPANY ET AL. v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.* Reparation on shipments of fruits from Florida points to the northeast not awarded. *H. C. Lust* and *R. S. Cook* for complainants. *R. W. Moore, F. W. Gwathmey, R. B. Scott, W. Burger, C. R. Young,* and *J. Stillwell* for defendants. February 2, 1914. Complaints dismissed.

5532 (U. R. No. A-493). *COLUMBUS BOARD OF TRADE ET AL v. SOUTHERN RAILWAY COMPANY.* Unreasonable rates on one horse from Richmond, Va., to Columbus, Ga. *E. S. Waddell* for complainant. *R. W. Moore* for defendant. February 3, 1914. Reparation awarded for \$1.60.

5616 (U. R. No. A-494). *BALLOU & WRIGHT v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.* Unreasonable rates on motor cycles from Armory, Mass., to Portland, Oreg. *J. O. Bracken* for complainant. *G. D. Squires* for defendants. February 3, 1914. Reparation to be awarded on presentation of proper proof.

5582 and 5582 (Sub-No. 1) (U. R. No. A-495). *RYAN & NEWTON CO. v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rates on grapefruit from East St. Louis, Ill., and St. Louis, Mo., to Spokane, Wash. *L. E. Gandy* for complainant. *C. E. Swan* for defendants. February 3, 1914. Reparation awarded for (total) \$241.28.

5686 (U. R. No. A-496). *OLIVER v. OPELOUSAS, GULF & NORTHEASTERN RAILWAY COMPANY ET AL.* Rates on dump cars from Opelousas, La., to Springfield, Ill., not found unreasonable. *F. L.*

Williams for complainant. *M. L. Clardy, H. G. Herbel, and F. G. Wright* for defendants. February 3, 1914. Complaint dismissed.

5536 (U. R. No. A-497). *ILLINOIS LEATHER COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* Unreasonable rates on hair waste from Rockford, Ill., to Montgomery, Ala. *O. M. Rogers* for complainant. *O. W. Dynes, W. A. Northcutt, and E. D. Mohr* for defendants. February 3, 1914. Reparation awarded for \$152.07.

5783 (U. R. No. A-498). *RICKARDS v. NORFOLK SOUTHERN RAILROAD COMPANY.* Unreasonable rates on mine-prop logs from North Carolina points to Berkley, Va. *J. R. Walker* for complainant. *W. B. Rodman* for defendant. February 3, 1914. Reparation to be awarded on presentation of proper proof.

5781 (U. R. No. A-499). *LEE COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rates on creosote oil from Moline, Ill., to Omaha, Nebr. *C. E. Ohilde* for complainant. *W. F. Dickinson, W. T. Hughes, R. G. Brown, G. Williams, O. W. Dynes, and R. B. Scott* for defendants. February 3, 1914. Reparation to be awarded on presentation of proper proof.

4727 (U. R. No. A-500). *COLORADO COFFEE ROASTING COMPANY ET AL. v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Rates on green coffee from New Orleans, La., to Denver, Colo., not found unreasonable. *W. H. Wallace* for complainants. *T. J. Norton, F. G. Wright, and W. F. Dickinson* for defendants. February 2, 1914. Complaint dismissed.

5255 (U. R. No. A-501). *SHELDON & COMPANY v. NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.* Rates on merchandise from Chicago, Ill., to New York, N. Y., not found unreasonable. *H. W. Ackhoff* for complainant. *S. C. Pratt* for defendants. February 2, 1914. Complaint dismissed.

5804 (U. R. No. A-502). *HAMMOND BROTHERS v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.* Unlawful discrimination on ice from Omaha, Nebr., to Kansas City, Mo. *H. G. Wilson* for complainants. *C. E. Spens* for defendant. February 3, 1914. Reparation awarded for \$3.80.

5399 (U. R. No. A-503). *FLANLEY GRAIN COMPANY ET AL. v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rates on corn from Boyden and Hornick, Iowa, and Elk Point, S. Dak., to Atchison, Kans. *G. T. Bell* for complainant. *O. W. Dynes, R. B. Scott, and C. C. P. Rausch* for defendants. February 2, 1914. Reparation awarded for (total) \$106.40.

5918 (U. R. No. A-504). *COLLINS COMPANY v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rates on lemons from Whittier, Cal., to Kennewick, Wash. *L. E. Gandy* for complainant.

A. O. Spencer for defendants. February 3, 1914. Reparation awarded for \$25.40.

5791 (U. R. No. A-505). *WEAVER v. WEST SHORE RAILROAD COMPANY ET AL.* Misrouting household goods shipped from West Englewood, N. J., to Charlottesville, Va. *J. R. Hoover* for complainant. *F. L. Ballard* and *W. S. Kallman* for defendants. February 3, 1914. Reparation awarded for \$23.76.

5721 (U. R. No. A-506). *JOSEPH COMPANY v. ATLANTIC COAST LINE RAILROAD COMPANY.* Unlawful demurrage charges on oats at Dothan, Ala. *J. H. Lewis* for complainant. *R. W. Moore* for defendant. February 3, 1914. Reparation awarded for \$9.

5947 (U. R. No. A-507). *LA JUNTA MILLING & ELEVATOR COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Unreasonable rates on wheat from Pawnee Rock, Kans., to Globe, Ariz., milled in transit at La Junta, Colo. *J. E. O'Connor* for complainant. *G. A. H. Fraser* for defendants. February 3, 1914. Reparation awarded for \$28.06.

5809 and 5809 (Sub-Nos. 1, 2, and 3) (U. R. No. A-508). *CAMDEN IRON WORKS ET AL. v. SOUTHERN RAILWAY COMPANY. SAME v. ATLANTIC COAST LINE RAILROAD COMPANY. SAME v. SEABOARD AIR LINE RAILWAY. CAMDEN IRON WORKS ET AL. v. NORFOLK & WESTERN RAILWAY COMPANY.* Unreasonable charge for wharfage and handling at Norfolk, Va., terminals on pig iron from Birmingham, Ala. *H. E. Hanes* for complainants. *C. D. Drayton* for defendants. February 3, 1914. Reparation to be awarded on presentation of proper proof.

5821 (U. R. No. A-509). *SLOANE v. SOUTHERN PACIFIC COMPANY ET AL.* Rating on screens and screen frames from New York, N. Y., to San Francisco, Cal., not found unreasonable. *G. O. Mattson* for complainant. *C. W. Durbrow*, *J. G. Wilson*, and *R. O. Fyfe* for defendants. February 3, 1914. Complaint dismissed.

5851 (U. R. No. A-510). *NOBLE v. DETROIT, TOLEDO & IRONTON RAILWAY COMPANY ET AL.* Rates on coiled elm hoops from Napoleon, Ohio, to Montreal, Canada, not found unreasonable. *G. A. Medaris* for complainant. *J. A. Scheuerman* for defendants. February 3, 1914. Complaint dismissed.

5886 (U. R. No. A-511). *SCATTERGOOD & COMPANY v. PERE MARQUETTE RAILROAD COMPANY.* Reconsigning and demurrage charges on oats from Chicago, Ill., to Elmira, N. Y., not found unreasonable. *W. T. Porch* and *E. F. Crane* for complainant. *Bills, Parker, Shields & Brown* for defendant. February 3, 1914. Complaint dismissed.

6036 (U. R. No. A-512). *TRUSSED CONCRETE STEEL COMPANY v. ERIE RAILROAD COMPANY ET AL.* Rates on expanded metal from Youngstown, Ohio, to Marquette, Mich., not found unreasonable.

E. M. Wood for complainant. No appearance for defendants. February 3, 1914. Complaint dismissed.

6094 (U. R. No. A-513). *TRUSSED CONCRETE STEEL COMPANY v. ERIE RAILROAD COMPANY ET AL.* Rates on steel sash and parts from Youngstown, Ohio, to Buchanan, Mich., not found unjustly discriminatory. *E. M. Wood* for complainant. *E. F. Bilo* for defendants. February 3, 1914. Complaint dismissed.

5715 (U. R. No. A-514). *WEINSTOCK-NICHOLS COMPANY ET AL. v. BOSTON & MAINE RAILROAD ET AL.* Rates on automobile headlights and searchlights from eastern points to the Pacific Coast not found unreasonable. *J. O. Bracken* for complainants. *C. W. Durbrow, A. P. Matthew, and E. W. Camp* for defendants. February 3, 1914. Complaint dismissed.

5187 (U. R. No. A-515). *PRICE ET AL. v. WASHINGTON & OLD DOMINION RAILWAY ET AL.* Passenger fares on the Great Falls division not found unreasonable, but certain changes suggested in family commutation books. *J. B. Daish and J. R. Hoover* for complainants. *F. Lyon and M. D. Hanley* in person. *W. J. Lambert, R. R. Perry, R. R. Perry, jr., and G. T. Dunlop* for defendants. February 2, 1914. No reparation.

5806 and 5806 (Sub-No. 1) (U. R. No. A-516). *CONTINENTAL PAPER BAG COMPANY v. MAINE CENTRAL RAILROAD COMPANY ET AL. SAME v. SAME.* Rates on paper bags from Rumford Falls, Me., to Memphis, Tenn., not found unreasonable. *J. T. Rogers* for complainant. *S. M. Carter, C. H. Blatchford, and C. J. Rixey* for defendants. February 3, 1914. Complaint in 5806 dismissed; but pending refund of certain overcharges, no order entered in Sub-No. 1.

5452 (U. R. No. A-517). *REID & SORLIE v. GREAT NORTHERN RAILWAY COMPANY.* Refusal to establish transit privilege for cleaning grain at East Grand Forks, Minn., not found unreasonable. *A. G. Sorlie* for complainants. *J. F. Finerty, jr.,* for defendants. February 2, 1914. Complaint dismissed.

6104 (U. R. No. A-518). *OHIO & MICHIGAN COAL COMPANY v. DAYTON, LEBANON & CINCINNATI RAILROAD & TERMINAL COMPANY ET AL.* Demurrage charges on coal at Lebanon, Ohio, not found unreasonable. *E. C. Crowley* for complainant. No appearance for defendants. February 9, 1914. Complaint dismissed.

5117 (U. R. No. A-519). *KING, COLLIE & COMPANY ET AL. v. ABILENE & SOUTHERN RAILWAY COMPANY ET AL.* Rates on export cotton from points in Texas to Galveston, Tex., not found unjustly discriminatory. *H. H. Haines* for complainants. *H. A. Scandrett, Baker, Botts, Parker & Garwood, E. B. Perkins, E. A. Haid, H. G. Herbel, F. G. Wright, Terry, Cavin & Mills, A. H. Culwell, A. S.*

Coke, and *A. H. McKnight* for defendants. February 2, 1914. Complaint dismissed.

5034, 5034 (Sub-Nos. 1 and 2), and 4029. (U. R. No. A-520). *CARPENTER v. ILLINOIS CENTRAL RAILROAD COMPANY. SAME v. CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL. SAME v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL. SAME v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.* Rates on structural iron and bridge iron from Carondelet, Mo., and Peotone, Ill., to points in Iowa and to Redfield, S. Dak., not found unreasonable; but the rates on such articles from Carondelet to points in Iowa and Huron, S. Dak., found unreasonable. *Collett & Hutchinson* and *G. M. Stephen* for complainant. *C. C. Wright, A. P. Humburg, W. F. Dickinson, W. T. Hughes, R. B. Scott, F. G. Wright*, and *O. W. Dynes* for defendants. February 2, 1914. Reparation awarded for (total) \$341.68.

5162 (U. R. No. A-521). *OLSON RUG COMPANY v. ATOHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.* Allegation that ratings on old carpets and rugs are unreasonable not sustained. *A. B. Hayes* and *C. Conradis* for complainants. *R. C. Fyfe, W. W. Collins, jr., W. R. Powe, C. D. Drayton*, and *W. Burger* for defendants. February 2, 1914. Complaint dismissed.

I. & S. 274 (U. R. No. A-522). *CANCELLATION OF EASTBOUND JOINT RATES FROM STATIONS ON THE BELLINGHAM & NORTHERN RAILWAY.* Existing rates required to be maintained for the future. *W. Metzenbaum* for protestants. *C. B. Graves* and *S. Wilson* for respondents. March 2, 1914. No reparation.

5575 (U. R. No. A-523). *TENNESSEE COPPER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.* Unreasonable rates on dynamite from Knoxville, Tenn., to Copper Hill, Tenn. *T. J. Laffey* for complainant. *W. A. Northcutt* for defendant. January 12, 1914. Reparation to be awarded upon presentation of proper proof.

I. & S. 308 (U. R. No. A-524). *RATES ON CANNED APPLES FROM POINTS IN WASHINGTON AND OTHER STATES TO EASTERN DESTINATIONS.* Proposed rates not justified, but slightly increased rates established. *M. E. Casto* and *A. E. Helm* for protestants. *G. W. Hamilton* and *W. E. Alair* for respondents. March 2, 1914. No reparation.

5111 (U. R. No. A-525). *DAVIS BROTHERS LUMBER COMPANY ET AL. v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.* Unreasonable rates on lumber from Ansley and Wyatt, La., to Collinsville and Ramona, Okla. *G. F. Thomas* for complainants. *J. L. Coleman* for defendants. March 2, 1914. Reparation awarded for (total) \$122.90.

4231 (U. R. No. A-526). *NEVADA HILLS MINING COMPANY v. SOUTHERN PACIFIC COMPANY*. Unreasonable rates on structural iron from San Francisco, Cal., to Fallon, Nev. *W. P. Seeds* for complainant. *G. D. Squires* for defendant. March 2, 1914. Reparation awarded for \$70.60.

4444 (U. R. No. A-527). *DUVALL, CARTER & COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.* Unreasonable rates on crossties from Fulton Junction, Md., to York, Pa. *J. R. Walker* for complainants. *C. B. Northrop, R. W. Moore, M. P. Callaway, H. W. Bikle, and F. L. Ballard* for defendants. March 2, 1914. Reparation awarded for \$40.74.

5262 (U. R. No. A-528). *CENTRAL PENNSYLVANIA LUMBER COMPANY v. TIONESTA VALLEY RAILWAY COMPANY ET AL.* Overcharge in weight on lumber from West Sheffield, Pa., to Bayonne, N. J. *C. H. McCauley, jr.*, for complainant. *C. E. Kingston* for defendants. March 2, 1914. Reparation awarded for \$2.08.

5334 (U. R. No. A-529). *STILWELL v. WELLS FARGO & COMPANY*. Collections and delivery limits extended so as to include all of city of Warwick, N. Y. *Kane & Stage* for complainant. *C. W. Stockton* and *H. S. Marx* for defendant. March 2, 1914. No reparation.

5704 (U. R. No. A-530). *WESTERN STORES COMPANY v. WELLS FARGO & COMPANY*. Unreasonable rates on poultry from Kansas points to Gallup, N. Mex. *W. H. Huff* for complainant. *J. H. Schultz, C. W. Stockton, and H. S. Marx* for defendant. March 2, 1914. Reparation awarded for \$112.73.

5807 (U. R. No. A-531). *LONE STAR BREWING COMPANY v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.* Unreasonable rates on wooden bungs from St. Louis, Mo., to San Antonio, Tex. *W. Aubrey* for complainant. *Cobbs, Eskridge & Cobbs* for defendants. March 2, 1914. Reparation awarded for \$20.30.

5962 (U. R. No. A-532). *SHARON v. CUMBERLAND VALLEY RAILROAD COMPANY ET AL.* Unreasonable rates on trolley ties from Richmond, Pa., to Port Reading, N. J. *J. H. Jones* for complainant. *J. T. Brady* and *R. R. Blydenburgh* for defendants. March 2, 1914. Reparation awarded for (total) \$99.90.

6125 (U. R. No. A-533). *BOECKELER LUMBER COMPANY v. TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL.* Fourth Section Application No. 2045. Misrouting and unreasonable rates on lumber from St. Louis, Mo., to Stolle, Ill. Relief from operation of fourth section denied. *H. A. Boeckeler* for complainant. *J. L. Howell* and *A. P. Humburg* for defendants. March 2, 1914. Reparation awarded for (total) \$78.33.

5323 (U. R. No. A-534). CHATTANOOGA SEWER PIPE & FIRE BRICK COMPANY *v.* NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL. Rates on building tile from Chattanooga, Tenn., to points in Tennessee, Georgia, and Florida found not unreasonable. March 2, 1914. Complaint dismissed.

5285 (U. R. No. A-535). MULLER & COMPANY *v.* GRAND TRUNK WESTERN RAILWAY COMPANY ET AL. Rates on chicory from Port Huron, Mich., to New Orleans, La., and Houston, Tex., not found unreasonable. *Beaumont, Smith & Harris* for complainant. *H. G. Herbel, R. W. Moore, and L. C. Stanley* for defendants. March 2, 1914. Complaint dismissed.

5278 (U. R. No. A-536). SPRING COAL COMPANY *v.* NORFOLK & WESTERN RAILWAY COMPANY. Demurrage regulations on coal at Norfolk and Lambert Point, Va., not found unreasonable. *H. N. Berry, C. C. Bucknam, and R. H. Tilton* for complainant. *T. W. Reath, L. H. Cocke, R. W. Moore, and M. P. Callaway* for defendant. March 2, 1914. Complaint dismissed.

4818 (U. R. No. A-537). NORTHWESTERN WOODENWARE COMPANY *v.* CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY ET AL. Upon motion of complainant, complaint dismissed. *W. H. Brokaw* for complainant. *F. Bousfield, O. W. Dynes, F. D. Burroughs, W. A. Robbins, and L. B. du Ponte* for defendants. March 2, 1914. No reparation.

5234 (U. R. No. A-538). WEST COMPANY *v.* PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL. Rates on vault plates and angles from Hamilton, Ohio, to Oakland, Cal., not found unreasonable. *G. S. Minott* for complainant. *R. Dunlap and T. J. Norton* for defendants. March 2, 1914. Complaint dismissed.

5578 (U. R. No. A-539). MILLER & COMPANY *v.* CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY ET AL. Upon refund of overcharges and adjustment of undercharge on potatoes from points in Wisconsin to points in Tennessee and Alabama, complaint will be dismissed. *J. E. Robinson* for complainants. *S. F. Miller and O. W. Dynes* for defendants. March 2, 1914. No reparation.

5621 (U. R. No. A-540). KULZER *v.* GREAT NORTHERN RAILWAY COMPANY ET AL. Rates on lumber from Kulzer, Wash., to Foxholm, N. Dak., not found unreasonable. *A. I. Kulzer* for complainant. *T. Balmer and F. D. Allen* for defendants. March 2, 1914. Complaint dismissed.

5693 (U. R. No. A-541). RAMSEY-WHEELER COMPANY *v.* SEABOARD AIR LINE RAILWAY ET AL. Demurrage charges on lumber at Columbus, Ga., not found unreasonable. No appearance for complainant. *R. W. Moore* for defendants. March 2, 1914. Complaint dismissed.

5881 (U. R. No. A-542). **HELMERS MANUFACTURING COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.** Rates on lumber from Madison, Ark., to Leavenworth, Kans., not found unreasonable. *H. G. Wilson* for complainant. *W. F. Dickinson* and *W. T. Hughes* for defendants. March 2, 1914. Complaint dismissed.

5879 (U. R. No. A-543). **NATIONAL REFINING COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.** Rates on petroleum and its products from Coffeyville, Kans., to La Crosse, Wis., not found unreasonable. *C. D. Chamberlin* for complainant. *J. M. Bryson*, *C. S. Burg*, *T. J. Norton*, *F. G. Wright*, *R. B. Scott*, *O. W. Dynes*, and *G. Williams* for defendants. March 2, 1914. Complaint dismissed.

6073 (U. R. No. A-544). **PAYNE v. GREAT NORTHERN RAILWAY COMPANY ET AL.** Rates on onions from Mora, Minn., to McAlester, Okla., not found unreasonable. *R. D. Sangster* for complainant. *J. W. Allen* for defendants. March 2, 1914. Complaint dismissed.

6175 (U. R. No. A-545). **BEAVER COMPANY v. NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY ET AL.** Wood pulp shipped from Black Rock, N. Y., to Easton, Pa., not misrouted. *G. E. Griffith* for complainant. *J. M. Sternhagen* for defendants.

I. & S. 353 (U. R. No. A-546). **WRAPPING PAPER RATES FROM EAST MOSS POINT, MISS.** Order of suspension vacated. *J. G. Mayo* for protestant. *A. B. Kearsey*, *W. J. Kessler*, and *E. W. Richie* for respondents. March 16, 1914. No reparation.

5973 (U. R. No. A-547). **COLUMBUS IRON WORKS COMPANY v. VICKSBURG, SHREVEPORT & PACIFIC RAILWAY COMPANY ET AL.** Rates on plow points from Vicksburg, Miss., to Tyler, Tex., not found unreasonable. March 2, 1914. Complaint dismissed.

NOTE.—The amount of reparation awarded in above cases aggregates \$6,120.96.

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THE COMMISSION DURING THE TIME COVERED BY THIS
VOLUME.

5845. NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE UNITED STATES *v.* PENNSYLVANIA RAILROAD COMPANY. February 2, 1914. Reparation for \$1,248.60 to members of Georgia Fruit Exchange on account of drayage charges collected on shipments of peaches and cantaloupes destined to defendant's piers at New York City, but delivered at Jersey City, N. J.

4773. BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, IN BEHALF OF HELENA LIGHT & RAILWAY COMPANY, *v.* DENVER & RIO GRANDE RAILROAD COMPANY ET AL. February 3, 1914. Reparation for \$310.96 to Helena Light & Railway Company on shipments of coal from Sunnyside, Utah, to Helena, Mont., on account of excessive rates.

4348. FARRAR LUMBER COMPANY *v.* NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY. February 3, 1914. Reparation for \$1,255.96 on shipments of yellow-pine lumber from Dalton, Ga., to local points on defendant's line, intermediate to Nashville, Tenn., on account of excessive rates.

5098. WEAKS IRON WORKS & SUPPLY COMPANY *v.* ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL. February 3, 1914. Reparation for \$42.43 on various less-than-carload shipments, moving under class rates from points east of the Mississippi River, to Monroe, La., on account of excessive rates.

2151. VIRGINIA-CAROLINA CHEMICAL COMPANY *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY. March 3, 1914. Reparation for \$228.62 on shipments of fertilizer from Memphis, Tenn., to points in Arkansas, on account of excessive rates.

4774. MEKUS *v.* WABASH RAILROAD COMPANY ET AL. March 3, 1914. Reparation for \$844.88 on shipments of live stock from Jewell, Ohio, to East Buffalo, N. Y., on account of excessive rates.

4616. ALEXANDRIA BARREL COMPANY *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL. March 3, 1914. Reparation for \$318.79 on shipments of tight barrels from Alexandria, La., to Houston, Tex., group points and Texas common point territory, on account of excessive rates.

3699. LINDSAY BROTHERS *v.* LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL. March 3, 1914. Reparation for \$642.77 on shipments of vehicles from Elkhart, Ind., to Milwaukee, Wis., on account of excessive rates.

4355. NEW ORLEANS BOARD OF TRADE, LIMITED, *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL. March 3, 1914. Reparation for \$19.20 to S. Locke Breaux on shipments of rough rice from Mesa, Ark., to New Orleans, La., on account of excessive rates.

5438. STANTON COMPANY *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL. March 3, 1914. Reparation for \$1,308.25 on shipments of green salted hides and pelts from Spokane, Wash., to Kenosha, Wis., on account of excessive rates.

5955. GUND BREWING COMPANY ET AL. *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY. March 3, 1914. Reparation for \$160.87 to John Gund Brewing Company and \$74.28 to G. Heileman Brewing Company on shipments of beer from La Crosse, Wis., to Tyndall, S. Dak., on account of excessive rates.

5030. SPARKS MILLING COMPANY *v.* CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS ET AL. March 3, 1914. Reparation for \$825.99 on shipments of grain and grain products from Alton, Ill., to Brownsville and other Tennessee points on account of excessive rates.

5390. EAGLE PASS LUMBER COMPANY *v.* GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL. March 3, 1914. Reparation for \$313.58 on shipments of lumber from Grayburg and Nelms, Tex., to Eagle Pass, Tex., destined to stations in Mexico, on account of excessive rates.

5178. (SUB-NO. 1.) UNITED STATES PORTLAND CEMENT COMPANY *v.* CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL. March 3, 1914. Reparation for \$54.16 on shipments of cement from Concrete, Colo., to Scotts Bluff and Morrill, Nebr., on account of excessive rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$7,649.34.

TABLE OF COMMODITIES.

- Acid, stearic.** Ivorydale, Ohio, to Sheboygan Falls, Wis. 374.
Acid, sulphuric. Copperhill, Tenn., to Savannah, Ga. 391.
Agricultural implements. *See* Implements.
Apples. Pacific coast to eastern points. 620.
Bamboo. Jackson, Mich., to other official classification territory points. 123.
Barrel material. Monroe, Ruston, Gibbsland, and Sibley, La. Transit privileges. 52.
Bars, steel. Perth Amboy, N. J., to New England. 500.
Beans. Paducah, Ky., from central and western trunk-line territory. 593.
Beer. Terre Haute, Ind., and Missouri River points to the West. 383.
Billets, steel. Perth Amboy, N. J., to New England. 500.
Bituminous coal. *See* Coal.
Box board. Wilmington, Ill., to Indiana and Milwaukee, Wis., and other points. 694.
Bridge iron. *See* Iron.
Butter. Buffalo, N. Y., to and from Lake Michigan and Lake Superior ports. 45.
Cabbages. Paducah, Ky., from central and western trunk-line territory. 593.
Canned goods. Paducah, Ky., from central and western trunk-line territory. 593.
Canned goods. Wisconsin to Chicago, Ill. Reconsignment rules. 620.
Catsup. Terre Haute, Ind., and Missouri River points to the West. 383.
Cattle. Bradley, Ark., to East St. Louis, Ill. 101.
Cattle. Nephi, Utah, to Los Angeles, Cal. 664.
Cattle. Owensboro, Ky., Kansas City, Mo., East St. Louis and Chicago, Ill., to and from. 18.
Cattle, feeder. Owensboro, Ky., Kansas City, Mo., East St. Louis and Chicago, Ill., to and from. 18.
Chip board. Wilmington, Ill., to Indiana and Milwaukee, Wis., and other points. 694.
Class rates. Chicago, Ill., to and from Iowa. 539.
Class rates. Cincinnati, Ohio, to Atlanta, Ga. 476.
Class rates. Illinois-Indiana State line to and from the Mississippi River and the West. 536.
Class rates. North Carolina from Ohio River crossings, St. Louis, Mo., and Memphis, Tenn. 550.
Class rates. St. Louis, Mo., and East St. Louis, Ill., to Fort Scott, Kans., and Kansas City, Mo. 629.
Class rates. Springfield, Mo., via St. Louis, Mo., from Illinois-Indiana State line. 600.
Class rates. Terre Haute, Ind., to Missouri River points. 383.
Class rates. Upper Mississippi River crossings in Iowa to and from Indiana-Illinois State line. 530.
Coal. Campbells Creek R. R. points to Kanawha & Michigan Ry. Co.'s points. 682.
Coal. Kanawha & Michigan Ry. Co., switching to and from, and the C. & O. Ry. Co. 671.
Coal. Newcomb, Tenn., to Greenville, S. C. 699.
Coal. Potomac yard, Va., to Alexandria, Va. Switching. 381.
Coal, bituminous. Campbell's Creek R. R. points to Kanawha & Michigan Ry. Co.'s points. 682.
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- Coal, bituminous. Pittsburgh, Pa., to eastern Ohio and western Pennsylvania. 428.
- Coal, lump. Vivian, W. Va., to Chicago, Ill. 125.
- Coarse salt. *See* Salt.
- Coke. Potomac yard, Va., to Alexandria, Va. 381.
- Commodity rates. Cincinnati, Ohio, to Atlanta, Ga. 476.
- Commodity rates. Colorado common points to and from Chicago, Ill., and the Mississippi and Missouri Rivers. 544.
- Commodity rates. North Carolina from Ohio River crossings, St. Louis, Mo., and Memphis, Tenn. 550.
- Commodity rates. St. Louis, Mo., and East St. Louis, Ill., to Fort Scott, Kans., and Kansas City, Mo. 629.
- Condensed milk. *See* Milk.
- Cotton. *See also* Linters. Arkansas concentration points. 106.
- Crude oil. *See* Oil.
- Crushed stone. *See* Stone.
- Culverts, iron. Terre Haute, Ind., and Missouri River points to the West. 383.
- Distillates, engine. Arizona from California, Kansas, Louisiana, and Texas. 405.
- Double-manure salts. *See* Salts.
- Dressed poultry. *See* Poultry.
- Eggs. Buffalo, N. Y., to and from Lake Michigan and Lake Superior ports. 45.
- Emigrant movables. Chicago, Ill., and St. Paul, Minn., to South Dakota. 40.
- Enameled ware. *See* Ware.
- Engine distillates. *See* Distillates.
- Engines, gasoline. California and other states from the East. 643.
- Excelsior. St. Paul, Minn., to Chicago, Ill., St. Louis, Mo., and Missouri River points. 640.
- Explosives, high. St. Louis, Mo., and relative points to Philadelphia, Pa., New York, N. Y., Boston, Mass., and Canada. 697.
- Feeder cattle. *See* Cattle.
- Fertilizer. North Atlantic seaboard points to Cincinnati, Ohio, and other points. 626.
- Fiber. *See also* Furniture. Jackson, Mich., to other official classification territory points. 123.
- Fittings, iron pipe. Whiting, Ind., from Martinsville, and East St. Louis, Ill. 524.
- Flax fiber, moss, and tow. St. Paul, Minn., to Chicago, Ill., St. Louis, and Missouri River points. 640.
- Flaxseed. Minneapolis, Minn., to Fredonia, Kans., and Kansas City, Mo. 633.
- Flour. Arizona from Kansas, Oklahoma, Nebraska, Colorado, Iowa, and Missouri. 424.
- Flour. Barton, Wis., to Milwaukee, Wis., and Chicago, Ill. 457.
- Flour. California from Kansas, Nebraska, and Oklahoma. 459.
- Forest products. Oregon-Washington R. R. & Nav. Co. points to the East. 609.
- Freight. New Castle, Pa. Switching. 114.
- Fresh meats. *See* Meats.
- Fruits. Colorado to Kansas points. 653.
- Fruits. Oregon-Washington R. R. & Nav. Co. points to the East. 609.
- Fruits, deciduous. Pacific coast to eastern points. 620.
- Fruits, green. Eastern destinations from Idaho, Oregon, and Utah. 650.
- Fuel oil. *See* Oil.
- Furniture. Jackson, Mich., to other official classification territory points. 123.
- Gasoline engines. *See* Engines.
- Gloves. Dayton, Ohio, to Superior, Wis. 99.
- Grain. Barton, Wis., to Milwaukee, Wis., and Chicago, Ill. 457.
- Grain. Bellefonte, Pa. Switching. 469.
- Grain. Chicago. Switching. 438.

- Grain. Iowa car distribution. 396.
- Grain. Memphis, Tenn., from Missouri, Arkansas, Oklahoma, and Kansas. 28.
- Grain. Texarkana, Ark., from Illinois and Missouri. 35.
- Grain. Wichita, Kans. Rate-making method. 376.
- Grain products. Arizona from Kansas, Oklahoma, Nebraska, Colorado, Iowa, and Missouri. 424.
- Grain products. Memphis, Tenn., from Missouri, Arkansas, Oklahoma, and Kansas. 28.
- Grain products. Texarkana, Ark., from Illinois and Missouri. 35.
- Grain products. Wichita, Kans. Rate-making method. 376.
- Grass. Jackson, Mich., to other official classification territory points. 123.
- Green fruit. *See* Fruit.
- Hardwood lumber. *See* Lumber.
- Hartsalz. North Atlantic seaboard points to Cincinnati, Ohio, and other points. 626.
- Hay. Jersey City, N. J., embargo charges. 90.
- Hay. Pier 29, East River, New York, N. Y. Demurrage. 659.
- Headings. Monroe, Ruston, Gibbsland, and Sibley, La. Transit privileges. 52.
- Hides. Oklahoma to St. Louis, Mo., East St. Louis, and Chicago, Ill., Milwaukee, Wis., and other points. 449.
- Hogs. Bradley, Ark., to East St. Louis, Ill. 101.
- Implements, agricultural. California and points in other states from the East. 643.
- Imported salts. *See* Salts.
- Iron. New England from Perth Amboy, N. J. 500.
- Iron articles. Oklahoma City, Okla., from Pittsburgh, Pa., Chicago, Ill., Birmingham Ala., and other points. 129.
- Iron, bridge. Terre Haute, Ind., and Missouri River points to the West. 383.
- Iron culverts. *See* Culverts.
- Iron pipe fittings. *See* Fittings.
- Iron, scrap. New England to Perth Amboy, N. J. 500.
- Kainit. North Atlantic seaboard points to Cincinnati, Ohio, and other points. 626.
- Linters, cotton. Arkansas concentration points. 106.
- Liquor, in glass. Minneapolis, Minn., to and from Edinburg, N. Dak. 667.
- Live stock. Bradley, Ark., to East St. Louis, Ill. 101.
- Live stock. Wichita, Kans., from Texas and Oklahoma. 669.
- Logs. Monroe, Ruston, Gibbsland, and Sibley, La. Transit privileges. 52.
- Logs. Superior, Wis., from Duluth, and other Minnesota points. 420.
- Lumber. Arkansas, Louisiana, Missouri, Oklahoma, Texas, and Memphis, Tenn., to Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin. 1.
- Lumber. Cairo and Thebes, Ill., to Illinois Stations and Fort Madison, Iowa. 38.
- Lumber. Camden, N. J. Storage. 559.
- Lumber. Chattanooga, Tenn., from Alabama and Georgia. 646.
- Lumber. Monroe, Ruston, Gibbsland, and Sibley, La. Transit privileges. 52.
- Lumber. Ohio River crossings. Loading and unloading. 565.
- Lumber. Oregon-Washington R. R. & Nav. Co. points to the East. 609.
- Lumber. Paducah, Ky., from Mississippi, Louisiana, and Arkansas. 583.
- Lumber. Superior, Wis., from Duluth and other points in Minnesota. 420.
- Lumber, hardwood. Arkansas, Louisiana, Missouri, Oklahoma, Texas, and Memphis, Tenn., to Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin. 1.
- Lumber, hardwood. New Orleans, La., from Mangham, Baskin, and Winnsboro, La., for export. 120.
- Lumber trimmings. *See* Trimmings.
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- Lumber, yellow pine. Arkansas, Louisiana, Missouri, Oklahoma, Texas, and Memphis, Tenn., to Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, South Dakota, and Wisconsin. 1.
- Lumber, yellow pine. Southeast to Ohio River for beyond. 94.
- Manure salts. *See* Salts.
- Marble. Tate, Ga., to Washington, D. C. 109.
- Marble. Vermont points via White Creek and Troy, N. Y., to New York, N. Y. 607.
- Meats, fresh. Buffalo, N. Y., to and from Lake Michigan and Lake Superior ports. 45.
- Milk, condensed. Johnson Creek, Wis., to Illinois. 43.
- Oil. Emlenton, Pa., to Milwaukee, Wis. 519.
- Oil, crude, fuel, and refined. Arizona from California, Kansas, Louisiana, and Texas. 405.
- Onions. Paducah, Ky., from central and western trunk line territory. 593.
- Ore. Ruby Hill and Eureka, Nev., to Midvale, Utah. 62.
- Overalls. Dayton, Ohio, to Superior, Wis. 99.
- Packing-house products. Oklahoma to St. Louis, Mo., East St. Louis, and Chicago, Ill., Milwaukee, Wis., and other points. 449.
- Paper-stock products. Wilmington, Ill., to Indiana and Milwaukee, Wis., and other points. 694.
- Pelts. Oklahoma to St. Louis, Mo., East St. Louis, and Chicago, Ill., Milwaukee, Wis., and other points. 449.
- Petroleum and products. Emlenton, Pa., to Milwaukee, Wis., and Michigan. 519.
- Petroleum products. Arizona from California, Kansas, Louisiana, and Texas. 405.
- Petroleum, refined. Arizona from California, Kansas, Louisiana, and Texas. 405.
- Pipe fittings. *See* Fittings.
- Potash, muriate and sulphate of. North Atlantic seaboard points to Cincinnati, Ohio, and other points. 626.
- Potatoes. Paducah, Ky., from central and western trunk line territory. 593.
- Potatoes. Rules for protection. 504.
- Potatoes. Wisconsin and Minnesota points to Chicago, Ill. Reconsignment rules. 620.
- Poultry, dressed. Buffalo, N. Y., to and from Lake Michigan and Lake Superior ports. 45.
- Projectiles. Richmond, Va., to Fort Mifflin, Pa. 702.
- Rattan. Jackson, Mich., to other official classification territory points. 123.
- Reed. Jackson, Mich., to other official classification territory points. 123.
- Refined oil. *See* Oil.
- Rough marble. *See* Marble.
- Salt, coarse. Cuylerville, N. Y., to Chicago Junction, Ohio. 464.
- Salts, imported, manure, and double-manure. North Atlantic seaboard points to Cincinnati, Ohio, and other points. 626.
- Sand-rubbed marble. *See* Marble.
- Scrap iron. *See* Iron.
- Shingles. Oregon-Washington R. R. & Nav. Co. points to the East. 609.
- Shingles. Sulphur Springs, Ga., to Chattanooga, Tenn. 646.
- Staves. Monroe, Ruston, Gibbeland, and Sibley, La. Transit privileges. 52.
- Stearic acid. *See* Acid.
- Steel. New England from Perth Amboy, N. J. 500.
- Steel articles. Oklahoma City, Okla., from Pittsburgh, Pa., Chicago, Ill., Birmingham, Ala., and other points. 129.
- Steel bars. *See* Bars.
- Steel billets. *See* Billets.
- Steel, structural. Fabrication-in-transit. 70.

Stock. *See* Live stock.

Stone, crushed. McCook, and Thornton, Ill., to Indiana and Michigan. 136.

Straw. Alton, Ill., from Missouri stations. 562.

Strawboard. Wilmington, Ill., to Indiana and Milwaukee, Wis., and other points. 694.

Structural steel. *See* Steel.

Sugar. Benson, Ariz., from Los Angeles and Los Alamitos, Cal. 103.

Sugar. California and Colorado to Terre Haute, Ind. 383.

Sulphuric acid. *See* Acid.

Sylvanite. North Atlantic Seaboard points to Cincinnati, Ohio, and other points. 626.

Tobacco. Henderson and Owensboro, Ky., to New Orleans, La., for export. 32.

Tomatoes. Jacksonville, Fla., to Mississippi River and beyond. 522.

Trimming, lumber. Odanah, Wis., to Rockford, Ill. 473.

Vegetables. Colorado to Kansas points. 653.

Vegetables. Wisconsin to Chicago, Ill. Reconsignment rules. 620.

Ware, enameled. Terre Haute, Ind., and Missouri River points to the West. 383.

Wheat. Arizona from Kansas, Oklahoma, Nebraska, Colorado, Iowa, and Missouri, 424.

Wheat. Dryden and New Hudson, Mich., to Bellefonte, Pa. 469.

Wheat. Kansas to California terminals. 459.

Wheat. Kansas City, Mo., to Memphis, Tenn. 28.

Wheat. Minneapolis, Minn., to Barton and Milwaukee, Wis., and Chicago, Ill. 457.

Wheat. Minneapolis, Minn., to Fredonia, Kans., and Kansas City, Mo. 633.

Whiskey. Terre Haute, Ind., and Missouri River points to the West. 383.

Willow furniture. *See* Furniture.

Windmills. California and other States from the East. 643.

Wool. Oregon-Washington R. R. & Nav. Co. points to the East. 609.

Yellow-pine lumber. *See* Lumber.

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TABLE OF LOCALITIES.

Alabama to Chattanooga, Tenn. Lumber, 646.
 Albany, Ga., to Philadelphia, Pa. Refund on lost ticket, 526.
 Alexandria, Va., from Potomac Yard, Va. Switching charges, 381.
 Alton, Ill., from Missouri. Straw, 562.
 Altus, Okla., from Birmingham, Ala., Chicago, Ill., and Pittsburgh, Pa. Iron and steel articles, 129.
 Altus, Okla., from other Oklahoma points to Wichita, Kans. Live stock, 669.
 Ann Arbor, Mich., from Emlenton, Pa. Petroleum and its products, 519.
 Arizona from California, Kansas, Louisiana, and Texas. Fuel oil, petroleum, and engine distillates, 405.
 Arizona from Kansas, Oklahoma, Nebraska, Colorado, Iowa, and Missouri. Flour and other grain products, 424.
 Arkansas to Little Rock and other Arkansas points. Concentration of cotton and cotton linters, 106.
 Arkansas to Paducah, Ky. Lumber, 583.
 Arkansas to Memphis, Tenn., and other points in southeastern territory. Grain and grain products, 28.
 Asheville, N. C., from Ohio River crossings, St. Louis, Mo., and Memphis, Tenn. Class and commodity rates, 550.
 Atlanta, Ga., from Cincinnati and other Ohio River crossings. Class and commodity rates, 476.
 Atlanta, Ga., from New York, N. Y., Boston, Mass, and interior eastern points. Class and commodity rates, 476.
 Australia from Vancouver, B. C., and other north Pacific coast terminals. All commodities, 414.
 Baltimore, Md., to Atlanta, Ga. Class and commodity rates, 476.
 Barton, Wis., to Milwaukee, Wis., diverted from Minneapolis, Minn. Transit privilege on grain, 457.
 Baskin, La., to New Orleans, La., for export. Hardwood lumber, 120.
 Bellefonte, Pa. Switching charges on grain, 469.
 Benson, Ariz., from Los Angeles and Los Alamitos, Cal. Sugar, 103.
 Birmingham, Ala., to Oklahoma City and other Oklahoma points. Iron and steel articles, 129.
 Boston and other New England points from St. Louis and other Mississippi River points. High explosives, 697.
 Boston, Mass., to Atlanta, Ga. Class and commodity rates, 476.
 Bradley, Ark., to East St. Louis, Ill. Hogs and cattle, 101.
 Buffalo, N. Y., from western termini of boat lines on Great Lakes. Butter, eggs, fresh meats, and live and dressed poultry, 45.
 Butte gateway to eastern destinations. Lumber, 609.
 Cairo, Ill., to Illinois, and Fort Madison, Iowa. Lumber, 38.
 Cairo, Ill., from Mississippi Valley territory. Lumber, 565.
 California to Creamery and other Arizona points. Fuel oil, petroleum, and engine distillates, 405.

- California to Terre Haute, Ind. Sugar, 383.
- California terminals from Chicago, and territory east of Missouri River. Gasoline engines and windmills, 643.
- California terminals from Hutchinson and other points in Kansas, Nebraska, and Oklahoma. Flour, 459.
- Camden, Ark., from other Arkansas points. Concentration of cotton and cotton linters, 106.
- Camden, N. J. Storage charges on lumber, 559.
- Canada to New York, N. Y., via New London, Conn. Demurrage on hay, 659.
- Canada from St. Louis, Mo., and other Mississippi River points. High explosives, 697.
- Central freight association and trunk line territories, points between. Class rates, 530.
- Central freight association territory, points between. Fabrication-in-transit. Structural steel, 70.
- Central freight association territory from North Atlantic ports. Potash and other commodities, 626.
- Central freight association territory to Paducah, Ky. Vegetables and canned goods, 593.
- Chattanooga, Tenn., from Alabama, Sulphur Springs, and other Georgia points. Shingles and lumber, 646.
- Chicago & Northwestern Ry. points. Reconsignment orders, 620.
- Chicago, Ill. Switching charges on grain, 438.
- Chicago, Ill., and other points, to South Dakota. Emigrant movables, 40.
- Chicago, Ill., and other territory east of the Missouri River to California terminals. Gasoline engines and windmills, 643.
- Chicago, Ill., from Barton, Wis. Transit privilege on grain, 457.
- Chicago, Ill., to Iowa and Missouri River points. Class and commodity rates, 539.
- Chicago, Ill., Milwaukee and other Wisconsin points from Wilmington, Ill. Paper stock products, 694.
- Chicago, Ill., between Missouri and Mississippi River points to Colorado common points. Class and commodity rates, 544.
- Chicago, Ill., to Oklahoma City and other points in Oklahoma. Iron and steel articles, 129.
- Chicago, Ill., from Oklahoma. Hides and pelts, 449.
- Chicago, Ill., to Owensboro, Ky. Feeder and fat cattle, 18.
- Chicago, Ill., from St. Paul and Winona, Minn. Excelsior, flax tow, flax moss, and flax fiber, 640.
- Chicago, Ill., via Vancouver, B. C., destined to Australia. All commodities, 414.
- Chicago, Ill., from Vivian, W. Va. Lump coal, 125.
- Chicago Junction, Ohio, from Cuylerville, N. Y. Coarse salt, 464.
- Cincinnati, Ohio, to Atlanta, Ga. Class and commodity rates, 476.
- Cincinnati, Ohio, from Covington and Newport, Ky. Switching charges on lumber, 565.
- Cincinnati, Ohio, from North Atlantic ports. Potash and other commodities, 626.
- Cincinnati, Ohio, to North Carolina. Class and commodity rates, 550.
- Clinton, Okla., from Birmingham, Ala., Chicago, Ill., and Pittsburgh, Pa. Iron and steel articles, 129.
- Colorado to Arizona. Grain products, 424.
- Colorado to Kansas. Refrigeration of fruits and vegetables, 653.
- Colorado to Terre Haute, Ind. Sugar, 383.
- Colorado common points from Chicago, Ill., and Mississippi and Missouri river points. Class and commodity rates, 544.

- Colorado gateways from Oregon and Washington, destined to Missouri River and points east of. Through routes and joint rates, 609.
- Congo and North End, Minn., to Superior, Wis. Logs, 420.
- Copperhill, Tenn., to Savannah, Ga., and Lancaster, S. C. Sulphuric acid, 391.
- Covington, Ky., to Cincinnati, Ohio. Switching charges on lumber, 565.
- Creamery, Ariz., from California. Fuel oil, petroleum, and engine distillates, 405.
- Cuba to Sparrows Point, Md. Iron ore, 212 (244).
- Cuylerville, N. Y., to Chicago Junction, Ohio, Port Huron and Delray, Mich. Coarse salt, 464.
- Dayton, Ohio, to Superior, Wis. Damaged overalls and gloves, 99.
- Delray, Mich., from Cuylerville, N. Y. Coarse salt, 464.
- Denver and other Colorado points to Hoisington and other Kansas points. Refrigeration of fruits and vegetables, 653.
- Denver, Colo., from St. Louis, Mo. Class and commodity rates, 544.
- Detroit, Mich., from Emlenton, Pa. Petroleum and its products, 519.
- Dryden, Mich., to Bellefonte, Pa. Switching charges on wheat, 469.
- Dubuque and Keokuk, Iowa, to upper Mississippi River crossings. Class rates, 530.
- Duluth, Minn., from other points in Minnesota to Superior, Wis. Logs, 420.
- East River, New York City. Demurrage charges on hay, 659.
- East St. Louis, Ill., from Bradley, Ark. Hogs and cattle, 101.
- East St. Louis, Ill., to Fort Scott, Kans., and Kansas City, Mo. Class and commodity rates, 629.
- East St. Louis, Ill., from Oklahoma. Hides and pelts, 449.
- East St. Louis, Ill., to Owensboro, Ky. Feeder and fat cattle, 18.
- East St. Louis, Ill., to Whiting, Ind. Iron pipe fittings, 524.
- Eastern destinations from Butte, Spokane, and Silver Bow gateways. Lumber, 609.
- Eastern points to Phoenix, Ariz. Fuel oil, petroleum, and engine distillates, 405 (408).
- Eastern destinations from Wallula gateway. Wool, 609.
- Edinburg, N. Dak., to and from Minneapolis, Minn. Liquor in glass, 667.
- El Reno, Okla., to St. Louis, Mo., East St. Louis and Chicago, Ill., and Milwaukee, Wis. Hides and pelts, 449.
- Emlenton, Pa., to Milwaukee, Wis., and Detroit and other Michigan points. Petroleum and its products, 519.
- Eureka, Nev., to Midvale, Utah. Ore, 62.
- Flagstaff, Ariz., from various States. Wheat and grain products, 424.
- Florida from Kanawha district. Bituminous coal, 671.
- Fort Madison, Iowa, from Cairo and Thebes, Ill. Lumber, 38.
- Fort Mifflin, Pa., from Richmond, Va. Target shells, 702.
- Fort Scott, Kans., from St. Louis, Mo., and East St. Louis, Ill. Class and commodity rates, 629.
- Fredonia, Kans., from Minneapolis, Minn. Flaxseed, 633.
- Gauley Junction, and Plymouth, W. Va., and points between, to North Carolina, South Carolina, Georgia, Florida, Virginia and Washington, D. C. Bituminous coal, 671.
- Georgia to Chattanooga, Tenn. Lumber, 646.
- Georgia from Kanawha district. Bituminous coal, 671.
- Gibbsland, La. Switching and cooperage charges on logs, 52.
- Gilbert, Ariz., from California. Fuel oil, petroleum, and engine distillates, 405.
- Grand Rapids, Mich., from Emlenton, Pa. Petroleum and its products, 519.
- Great Lakes, western termini of boat lines on, to Buffalo, N. Y. Butter, eggs, fresh meats, and live and dressed poultry, 45.
- Greensboro, N. C., from Ohio River crossings, St. Louis, Mo., and Memphis, Tenn. Class and commodity rates, 550.

- Greenville, S. C., from Newcomb, Tenn. Coal, 699.
- Guthrie, Okla., to St. Louis, Mo., East St. Louis and Chicago, Ill., and Milwaukee, Wis. Hides and pelts, 449.
- Hammond, Ind., from McCook, Ill. Crushed stone, 136.
- Henderson, Ky., to New Orleans, La. Unmanufactured tobacco for export, 32.
- Hoisington and other Kansas points from Denver and other Colorado points. Refrigeration of fruits and vegetables, 653.
- Holbrook, Ariz., from various States. Wheat and other grain products, 424.
- Hutchinson, Kans., to California terminals. Flour, 459.
- Hutchinson, Kans., from Denver and other Colorado points. Refrigeration of fruits and vegetables, 653.
- Idaho to Missouri River and points east and west of. Green fruit, 650.
- Illinois. Passes over lines operating in said State, 411.
- Illinois from Cairo and Thebes, Ill. Lumber, 38.
- Illinois from Johnson Creek, Wis. Condensed milk, 43.
- Illinois to Texarkana, Ark. Grain and grain products, 35.
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Ohio River Crossings. Paducah Board of Trade v. I. C. R. R. Co. 593 (596).

Constructing rates to certain points on basis of arbitraries should be continued. *Mississippi River Case*, 530 (534).

ARBITRARY.

Bridge toll spoken of as an arbitrary. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (567).

ARBITRATION.

Rates fixed under arbitration of 1886. *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (631).

ARRIVAL.

Freight bill as notice of arrival. *In re Freight Bills*, 496.

ASSEMBLING. See also CONCENTRATION; TRANSIT PRIVILEGES.

Cars. *Industrial Railways Case*, 212 (236).

Cost. *Hughes Creek Coal Co. v. K. & M. R. R. Co.*, 671 (675).

ASSORTING CARS.

Industrial Railways Case, 212 (236).

ATTORNEY FEE.

Commission no power to award. *Botsford & Barrett v. P. R. R. Co.*, 469 (472).

AVERAGE.

Distance considered in determining reasonableness of rate. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.*, 129 (130); *Commercial Club of Terre Haute v. V. R. R. Co.*, 383 (389); *Pacific Creamery Co. v. S. P. Co.* 405 (410); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (430); *Crowdus Bros. v. A. T. & S. F. Ry. Co.*, 449 (454); *Pardee Works v. C. R. R. Co. of N. J.*, 500 (502); *Mississippi River Case*, 530 (533).

Haul. Mentioned in determining reasonableness of rate. *Adams & Sons Co. v. V. S. & P. Ry. Co.*, 52 (56); *Maier & Co. v. S. P. Co.*, 103 (105); *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (454); *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

Loading. Discussed in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Rate. Considered in determining reasonableness of rate. *Pacific Creamery Co. v. S. P. Co.* 405 (409).

Revenue. *Maier & Co. v. S. P. Co.*, 103 (104); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (485).

Revenue per mile of road. *Id.* 476 (480).

Short-line distance mentioned in determining propriety of rate adjustment; *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (604).

Ton per mile revenue. *Lumber Rates from the Southwest to Points North*, 1 (9); *Maier & Co. v. S. P. Co.* 103 (105); *Atlanta Freight Bureau v. N. C. & St. L. Ry.*, 476 (486); *Pardee Works v. C. R. R. Co. of N. J.*, 500 (502); *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591).

For all railways in United States on live stock and all other freight. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (24).

Train-mile earnings considered in determining reasonableness of rate. *Duluth Log Rates*, 420 (421).

Weight. Mentioned in determining reasonableness of rate. *Straw Rates from Stations in Missouri*, 562 (564); *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

Averaging of revenue. *Id.* 671 (676).

BACK HAUL.

Included in transit privilege. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52 (55).

Involved. *Fabrication-in-transit Charges*, 70 (80).

Waste of transportation involved in. *Id.* 609 (619).

BASING POINT.

Differentials on traffic from. *Norman Lumber Co. v. L. & N. R. R. Co.* 565.

Pittsburgh base rate determines price of iron and steel articles. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129.

BASIS OF RATES.

Breaking-rate system neither extended nor condemned in this case. *Wichita Board of Trade v. A. & S. Ry. Co.* 376.

Mileage system has not yet been adopted, and Commission at this time declines to require its establishment. *Id.* 376 (379-380).

Blanket or zone systems recommended herein. *Pacific Creamery Co. v. S. P. Co.* 405.

Arbitrary system should be continued. *Mississippi River Case*, 530 (534).

Indicated. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 539.

BETTERMENTS.

Expense involved in improving physical conditions of roads. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432, 436).

BILL OF LADING.

Enforcement and waiver of provision as to time and form in which claims for damages must be presented under section 3, paragraph 3, of the Uniform Bill of Lading. In re Bills of Lading, 417 (418).

"BILLED."

Defined. *New York Hay Exchange Assn. v. L. V. R. R. Co.* 90 (92).

BILLING.

Checking of, in connection with transit privilege. Fabrication-in-transit Charges, 70 (89).

BLANKET RATES. See also GROUP RATES; ZONE RATES.

Grain and grain products. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28 (30).

Sugar. *Maier & Co. v. S. P. Co.* 103 (105).

Iron articles. *Oklahoma Traffic Assn. v. A. T. & S. F. Ry. Co.* 129 (132).

Transcontinental traffic. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (388).

Defendants may either establish the blanket rates prescribed herein or may establish zone rates. *Pacific Creamery Co. v. S. P. Co.* 405.

Fuel oil, refined petroleum and engine distillate. *Id.* 405.

Flour. *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424 (425).

Flour and wheat. *Kansas-California Flour Rates*, 459.

Class rates. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 539 (541).

Wool. *Lumber Rates from Oregon and Washington*, 609 (611).

BLIND BILLING.

Starting off shipment without knowing ultimate destination. *C. & N. W. Ry. Reconsignment Rules*, 620 (622).

BOAT LINES. See WATER LINES.**"BODY ICE."**

Described. *Refrigeration Charges on Fruits and Vegetables*, 653 (656).

BOTH DIRECTIONS.

Eastbound rates should be on a parity with westbound rates herein. *Mississippi River Case*, 530.

Carriers should either charge a bridge toll on traffic in both directions at every Ohio River crossing or not charge it at any crossing. *Norman Lumber Co. v. L. & N. R. R. Co.* 565; *Paducah Board of Trade v. I. C. R. R. Co.* 583; Same *v.* Same, 593.

BRANCH LINES.

Rates should not be fixed for a main line without reference to branch lines contributing to it. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (485).

Paducah Board of Trade v. I. C. R. R. Co. 593 (598).

Cost of operation branch lines and main lines. *Lughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

No undue prejudice can be predicated upon the application of main-line or district rates to points on branches of one road while denying such rates to points on another road. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682.

BREAKING POINTS.

Rates on Grain and Grain Products to Texarkana, 35 (37).

BREAKING RATES.

Constructing rates on the rate-breaking system at Kansas City while declining to do so at Wichita, held not to subject the latter to undue prejudice. *Wichita Board of Trade v. A. & S. Ry. Co.* 376.

BREAK OF BULK.

Owing to lack of facilities for breaking of bulk and transferring, through cars used for various lots instead of consolidating small lots in carloads at concentration points. Concentration of Cotton at Points in Arkansas, 106 (107).

BRIDGES.

Toll of \$2 approved by Commission. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (27).

Double toll. Concentration of Cotton at Points in Arkansas, 106 (107).

Rates to Alton bear a bridge toll. Straw Rates from Stations in Missouri, 562.

Question of absorption of bridge tolls is largely one of policy with carrier, and it may absorb or not so long as the alternative adopted does not place an undue burden upon a shipper or locality. Norman Lumber Co. v. L. & N. R. R. Co. 565 (570).

The southern carriers can not elect to absorb all or part of the bridge toll on traffic to north-bank Ohio River points if to do so results in undue prejudice and disadvantage to south-bank points. Id. 565 (570).

A bridge toll may not be absorbed at one crossing and added to the rate at a competitive crossing. Id. 565 (570).

Bridge charges are similar to terminal charges; they should be based upon the cost of service. Id. 565 (570).

Cost of construction and maintenance not to be charged to local traffic. Id. 565 (569).

Mileage across bridge deemed constructive mileage for which an additional charge may be exacted. Id. 565 (570).

No matter by whom owned, the expense of maintaining a bridge should be apportioned among the carriers in proportion to the use made of it. Id. 565 (570).

Carriers should either charge a bridge toll on traffic in both directions at every Ohio River crossing or not charge it at any crossing. Id. 565; Paducah Board of Trade v. I. C. R. R. Co. 583 (588); Same v. Same, 593.

Distance across Ohio River bridge at Cairo deemed 112 constructive miles. Paducah Board of Trade v. I. C. R. R. Co. 583 (591).

Service over bridge is an additional service. Id. 583 (588).

Switching at bridge. Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

BULK.

Considered in determining classification of commodity. Michigan Seating Co. v. G. F. W. Ry. Co. 123 (124).

BUNCHING.

Additional free time on account of. American Hay Co. v. C. V. Ry. Co. 659 (662).

BUNKERS.

Filling bunkers with ice. Refrigeration Charges on Fruits and Vegetables, 653 (654).

BURDEN OF PROOF.

Burden not shifted to defendant by failure to rebut cost estimates of complainant. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (435).

Burden is upon carrier to show reasonableness of demurrage charges, where no such charges were imposed in past. American Hay Co. v. C. V. Ry. Co. 659 (660).

Advance in rates upon carrier. Lumber rates from the Southwest to Points North, 1 (16); Rates on Grain and Grain Products to Texarkana, 35 (37); Rates on Crushed Stone, 136 (137); Duluth Log Rates, 420 (421); C. & N. W. Ry. Reconsignment Rules, 620 (625); Rates on Potash and Other Commodities, 626 (628); Boxboard Rates from Wilmington, 694 (696); Stone & Son v. S. Ry. Co. 699 (701).

BURDEN OF TRANSPORTATION. See also SYSTEM.

Heavy burden on single article. Fabrication-in-transit Charges, 70 (83).

On local traffic. Norman Lumber Co. v. L. & N. R. R. Co. 565 (569).

CALIFORNIA OIL PRODUCING FIELD.

Described. *Pacific Creamery Co. v. S. P. Co.* 405 (406).

CANCELLATION.

Billing. Fabrication-in-transit Charges, 70 (89).

Commodity rates. Emigrant Movables to South Dakota, 40; Lumber Rates from Local Points to Chattanooga, 646; New England and Canadian High Explosive Rates, 697.

Through routes. Lumber Rates through Ohio River Crossings, 38; Swift & Co. v. P. R. R. Co. 464; Lumber rates from Oregon and Washington, 609; Rates on Green Fruit from Idaho, etc., 650; Wichita Business Assn. v. K. C. M. & O. Ry. Co. 669 (670).

Proportional rates. Straw Rates from Stations in Missouri, 562.

Mixing privilege. Rates on Gasoline Engines and Windmills, 643.

Joint rates. Marble Rates from Vermont Points, 607; Lumber Rates from Oregon and Washington, 609; Rates on Green Fruit from Idaho, etc., 650; Wichita Business Assn. v. K. C. M. & O. Ry. Co. 669 (670).

CAPITALIZATION.

Of industries in Atlanta over Birmingham. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (480).

CAR DISTRIBUTION.

Distinction drawn between distribution of cars for grain traffic and apportionment of cars for coal under fixed mine ratings. R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co. 396.

The question of the proper distribution of grain cars in times of shortage is one that cannot be dealt with by any fixed, arbitrary, and inelastic regulation, and must finally rest in the exercise of a sound discretion in the station agent. *Id.* 396 (404).

Petition seeking a rule for the distribution of grain cars in times of shortage based on the past performances of the elevators, dismissed. *Id.* 396 (398-404).

"House rule." *Id.* 396 (399).

"Crop-holding rule." *Id.* 396 (399).

CAR EARNINGS.

Loss of, through use of cars for industrial switching. Fabrication-in-transit Charges, 70 (79).

Considered in determining reasonableness of rate. Lumber Rates from the Southwest to Points North, 1 (13); Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (23); Emigrant Movables to South Dakota, 40 (41); Maier & Co. v. S. P. Co. 103 (105); Pacific Creamery Co. v. S. P. Co. 405 (406); Duluth Log Rates, 420 (421); Straw Rates from Stations in Missouri, 562 (564); Lumber Rates from Local Points to Chattanooga, 646 (648).

CARETAKER.

Free transportation of, as an additional service. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (23).

For perishable freight. Protection of Potato Shipments in Winter, 504.

CAR FERRY.

Whether additional charge should be made for car ferry service, not now determined. Industrial Railways Case, 212 (227).

Transfer by. Pardee Works v. C. R. R. Co. of N. J. 500 (501).

Norman Lumber Co. v. L. & N. R. R. Co. 565 (569).

Cost of maintenance and operation, discussed. Paducah Board of Trade v. I. C. R. R. Co. 593 (599).

CAR FITTINGS.

Carrier may require shipper to partition cars for mixed shipments of live stock. Lee v. St. L. S. W. Ry. Co. 101 (102).

Returned free. Protection of Potato Shipments in Winter, 504 (505).

CAR FURNISHING.

Duty of carrier to furnish cars, under section 1. Lumber Rates through Ohio River Crossings, 38 (39).

In case of a through rate, obligation to furnish cars is joint and rests upon all participating carriers. *Id.* 38 (39).

No presumption that carriers will fail in duty to furnish equipment. *Id.* 38 (40). There is no such thing as local traffic that enjoys rights superior to through traffic in the matter of car furnishing. *C. & N. W. Ry. Reconsignment Rules*, 620 (624).

Missouri & Illinois Coal Co. v. I. C. R. R. Co., 22 I. C. C. 39, distinguished. *Id.* 620. Duty of initial carrier. *Id.* 620 (624).

Question as to scarcity of cars furnished, not being necessarily involved herein, is not passed upon. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (681).

Contention that a lateral branch line is under no obligation to furnish cars, not sustained. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (690).

In case of through routes, the obligation to furnish cars is joint upon the carriers therein, including lateral branch lines. *Id.* 682 (690).

That portion of section 1 which makes it the duty of every carrier subject to the act to furnish cars must be read into that portion of section 1 which deals with carriers and lateral branch lines. *Id.* 682 (690).

CARGO RATES.

Greater number of cars per train, urged as an element to be considered in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

CARLOAD AND LESS THAN CARLOAD.

Commission has approved carload rates which are less per 100 pounds than the l. c. l. rates on same commodity. *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664 (665).

CARMACK AMENDMENT. See also LIMITATION OF LIABILITY.

Norcross Bros. Co. v. L. & N. R. R. Co. 109 (113); Protection of Potato Shipments in Winter, 504 (507).

CAR-MILE EARNINGS. See also CAR EARNINGS.

Considered in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433).

CAR RATES.

A rate in cents per hundred pounds usually preferable to a flat rate dollars-per-car system. *Rock Springs Distilling Co. v. I. C. R. R. Co.* 18 (27).

CAR RENTAL.

Refrigerator car. Protection of Potato Shipments in Winter, 504 (506).

CARRIER'S SERVICE.

Discussed. *Industrial Railways Case*, 212 (236).

CARS.

Number owned by Louisiana & Arkansas Railway. Lumber Rates through Ohio River Crossings, 38 (39).

Question of inadequacy of supply presented but withdrawn. *R. R. Comm. of Iowa v. C. R. I. & P. Ry. Co.* 396 (397).

Dual rates dependent upon length of car. *Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co.* 473.

No obligation rests on carrier to possess itself of special equipment in such amount that a considerable portion of it would remain idle for six months in the year. *C. & N. W. Ry. Reconsignment Rules*, 620 (624).

Are one of carrier's strongest assets. *Id.* 620 (624).

Confiscation of, by connecting road. *Id.* 620 (623).

CARS—Continued.

Carrier meets its obligations under the law when it equips itself with sufficient cars to meet requirements of its shippers and establishes with its connections equitable car-interchange arrangements. *Id.* 620 (623).

CAR SERVICE.

Charges, freight bill should specify. *In re Freight Bills*, 496 (497).

CAR SHORTAGE. See also CAR DISTRIBUTION.

Inevitable under prevailing conditions. *C. & N. W. Ry. Reconsignment Rules*, 620 (624).

CARTAGE.

Relieving shipper from expenses of, discussed, but not disposed of. *Industrial Railways Case*, 212 (227).

CHICAGO AND EASTERN ILLINOIS RAILROAD.

Purchase of by St. L. & S. F. R. R. Co.: Commission's report of investigation and facts. *St. Louis & San Francisco Railroad Investigation*, 139.

CINCINNATI SOUTHERN ROAD.

Owned by the city of Cincinnati. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (478).

CIRCUMSTANCES AND CONDITIONS.

Similarity of circumstances and conditions discussed. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (67).

Considered in determining reasonableness of rate. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (389); *Pacific Creamery Co. v. S. P. Co.* 405 (409); *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (677).

Transportation of lake cargo coal is dissimilar to that which obtains with respect to valley coal. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433).

Different on traffic to Atlanta and Nashville from the East. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (493).

Allegation of unjust discrimination. Not alone question of whether circumstances and conditions are dissimilar; but whether fourth section may be disregarded. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (604).

Each case must be disposed of in view of facts and circumstances disclosed. *Rates on Green Fruit from Idaho, etc.*, 650 (651).

CIRCUITOUS ROUTE.

Transportation by in order to obtain line haul. *Lumber rates from the Southwest to Points North*, 1 (5).

A carrier can not reserve to itself the long haul if to do so works to the detriment of shippers. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591).

Meeting short line rate, and short line meeting long line rate, discussed. *Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co.* 120 (122).

Deviation from section 4, commented upon. *Emlenton Petroleum Rates*, 519 (521).

When justified in deviating from section 4. *Standard Oil Co. v. P. Co.* 524 (525).

CLAIMS.

Loss and damage claims as an element to be considered in fixing rates. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (23).

Reasonableness of 4-months' time limit for presentation of claims for loss or damage, not passed upon. *In re Bills of Lading*, 417.

Waiver of provision in Uniform Bill of Lading, *Id.* 417.

CLASSIFICATION. See also COMPARATIVE RATES.

Live Stock is not classified in official classification. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (26).

Condensed milk in barrels, half barrels or kegs. *Condensed Milk Rates between Illinois and Wisconsin*, 43.

CLASSIFICATION—Continued.

Duty of carrier to establish reasonable. *Lake-and-rail Butter and Egg Rates*, 45 (47).

Of fiber furniture found unreasonable. *Michigan Seating Co. v. G. T. W. Ry. Co.* 123.

Official classification governs traffic from the east to Nashville and Memphis, while southern classification governs on traffic to Atlanta, Chattanooga and Knoxville. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (488).

Of operating expenses, etc., of steam roads, discussed. *St. Paul and Puget Sound Accounts*, 508 (509).

Reduction to lower class made by carrier after complaint filed. *U. S. v. R. F. & P. R. R. Co.* 702 (703).

Of projectiles not found to be unreasonable. *Id.* 702 (703).

CLASS RATES.

Lower than commodity rates. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (26).

Change from commodity to higher class rates, justified. *Emigrant Movables to South Dakota*, 40.

No definite relation to commodity rates from defined territory. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (135).

Combined with commodity rate in making up through rate. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (387).

Substituted for commodity rates. *Mississippi River Case*, 530 (535).

CLEAN HANDS.

It is no defense to a charge of unjust discrimination that a short-line is violating the commodity clause. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (693).

CLEARING HOUSES.

For adjustment of reparation claims. *Eastman, Gardiner & Co. v. I. C. R. R. Co.* 94 (95).

COASTWISE DIFFERENTIALS.

Abolition of, in rates to Atlanta would affect likewise rates to the Carolinas and remainder of Southeastern Territory. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (494).

COLD.

Protection of Potato Shipments in Winter, 504.

COMBINATION RATES.

Made up of a proportion of rate and another rate. *Lake-and-rail Butter and Egg Rates*, 45 (48).

Equal to joint through rate. *Fabrication-in-transit Charges*, 70 (81).

Compared with joint rate. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (133).

Usually higher than joint through rate. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (377).

Ocean-and-rail. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (491).

From points in central freight association territory, *Id.* 476 (481).

Proportional rate based on lowest combination. *Rates on Tomatoes from Jacksonville*, 522.

Compared with proportional rates. *Interior Iowa Cities Case*, 536 (537).

Made up of proportional rates and rates beyond. *Rates to North Carolina Points*, 550 (551).

Contention made that it is impracticable to make combinations equal through different crossings. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (576).

Not through rate but only combination of locals between certain points, brought into question. *Id.* 565 (566).

Involved. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (590).

COMMERCIAL AND ECONOMIC CONDITIONS. *See also* ADVANTAGES AND DISADVANTAGES.

Natural disadvantages and high cost of production is no ground for reducing a rate.

Lumber Rates from the Southwest to Points North, 1 (16).

Considered in determining rate adjustment. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (380).

Commission ought not to attempt to equalize. *Kansas-California Flour Rates*, 459 (463).

Population, wealth, bank clearings, capitalization, value of materials, etc., of one city compared with those of another. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (480).

That an industry is not in a prosperous condition or that the cost of assembling its raw material may be greater than that of its rival, is not of itself a sufficient reason for ordering a reduction in rates. *Pardee Works v. C. R. R. Co. of N. J.*, 500, (502).

COMMISSION MERCHANTS.

Not entitled to reparation in this case. *New York Hay Exchange asso. v. L. V. R. R. Co.* 90 (92).

COMMODITIES CLAUSE.

Contention that it would be impossible to hold certain short line to be a common carrier without finding it guilty of a violation of the commodities clause, not sustained. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682.

Ownership of a railroad by the principal shipper on its line is not prohibited by the act. *Id.* 682 (692).

Violation of the commodities clause would not justify an unjust discrimination against one of the companies violating such clause. *Id.* 682 (693).

COMMODITY RATES.

Higher than a class rate is an abnormality which requires special justification. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (27).

Change from commodity to higher class rates, justified. *Emigrant Movables to South Dakota*, 40.

Suggestion that commodity rate be extended so as to include condensed milk packed in barrels, half barrels or kegs. *Condensed Milk Rates between Illinois and Wisconsin*, 43.

No definite relation to class rates from defined territory. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (135).

Combined with class rate in making up through rate. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (387).

Are special rates, made to meet special conditions, and should not necessarily be disturbed because of a change in the class schedules. *Mississippi River Case*, 530 (535).

Class rates substituted for. *Id.* 530 (535).

Withdrawal of commodity rates on high explosives from Mississippi River to the east permitted. *New England and Canadian High Explosive Rates*, 697.

COMMON LAW.

Delivery of carload freight on private siding is made by shunting car upon switch clear on main tracks. *Industrial Railways Case*, 212 (225).

COMMUTATION TICKETS.

Refund for unused portion. *Miller v. A. C. L. R. R. Co.* 526 (529).

COMPARATIVE RATES. *See also* RELATIVE RATES.

Same rate on yellow pine and hardwood lumber. *Lumber Rates from Southwest to Points North*, 1 (16).

COMPARATIVE RATES—Continued.

Difference in rates on beef-cattle and stock-cattle. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (24).

Wheat and corn rates compared. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28 (30).

Clothing and damaged overalls and gloves, compared. *Danciger v. P. C. O. & St. L. Ry. Co.* 99 (100).

No definite relation between commodity and class rates from defined territory; such a relation, if it existed, would not justify undue prejudice. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (135).

Logs compared with lumber and pulp wood. *Duluth Log Rates*, 420 (422).

Flour and wheat compared. *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424 (426).

Commercial coal compared with lake cargo coal. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Hides and pelts are entitled to as low a rate as packing-house products. *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449.

Spread between wheat and flour. *Kansas-California Flour Rates*, 459 (460).

Lumber trimmings compared with lumber. *Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co.* 473.

Ordinarily same rate applies to all lumber without reference to value or condition, and this rate frequently includes such manufactured products as doors, sash, etc.; but there is no reason why lumber may not be classified. *Id.* 473 (475).
Billets and scrap iron take same rate. *Pardoe Works v. C. R. R. Co. of N. J.* 500 (503).

Straw: establishing rate on straw that is as high as rate on hay, justified. *Straw Rates from stations in Missouri*, 562.

Cottonwood and gum lumber given lower rates than other lumber. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (585).

Potash compared with nitrate of soda. *Rates on Potash and other Commodities*, 626 (628).

Flaxseed rate advanced to basis of wheat rate. *Rates on Flaxseed from Minneapolis to Fredonia*, 633.

Flax tow and excelsior on same rate basis. *Rates on Excelsior and Flax Tow*, 640 (641).

Projectiles or shells compared with so-called analogous articles. *U. S. v. R. F. & P. R. R. Co.* 702 (703).

COMPETITION. *See also* ACTUAL COMPETITION; WATER COMPETITION; RAILROAD COMPETITION; MARKET COMPETITION; CROSS-COUNTRY COMPETITION.

As creating dissimilarity of conditions justifying difference in rates. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28 (31).

"Meeting competition" used in the sense of destroying lake traffic. *Lake-and-rail Butter and Egg Rates*, 45 (50).

Can not be said to have compelled an unreasonably low rate when such rate is not lower than that charged for like or greater distances in other parts of country where transportation conditions are similar or more difficult. *Maier & Co. v. S. P. Co.* 103 (104-105).

Industrial roads allowances have been outgrowth of. *Industrial Railways Case*, 212 (230).

Lake cargo coal. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433).

In order to prove violation of section 3, competitive relationship of commodities must be shown. *Chicago Board of Trade v. A. T. & S. F. Ry. Co.* 438 (443).

COMPETITION—Continued.

Carriers proposed to advance rate which was established to meet competition of rail-and-water carriers, which competition was overestimated. *Kansas-California Flour Rates*, 459 (461).

Held to justify lower rate at farther-distance point. *Swift & Co. v. P. R. R. Co.* 464 (469).

Legitimate competition, locality properly entitled to advantages of. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (495).

Fluctuation in rates due to. *Id.* 476 (481).

Found to have had some effect in fixing rates between certain points but not found to have had effect of throwing differentials out of line from a mileage standpoint.

Norman Jumber Co. v. L. & N. R. R. Co. 565 (578).

COMPETITIVE RATES.

Not a measure of normal rate. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (606).

Phrase "competitive rates" used in sense of rates which permit coal from certain fields to meet competition of coal from other fields. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (672).

COMPLAINT. See LIMITATION OF ACTION.

Amendment to include shipments moving after original complaint filed. *Pacific Creamery Co. v. S. P. Co.* 405.

COMPROMISE.

Complainant should accept compromise sum by way of reparation. *Eastman, Gardiner & Co. v. I. C. R. R. Co.* 94 (97, 98).

CONCENTRATION.

Rules relating to routing held unreasonable. *Concentration of Cotton at Points in Arkansas*, 106.

Of consignments into carload lots in order to conserve car supply. *Id.* 106 (107).

Concentrating point, no offset to higher rate enjoyed by point considered as. *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (454).

CONCESSIONS.

Ought to be eliminated before roads are permitted to make general rate increase. *Industrial Railways Case*, 212 (218).

Allowances to industrial road referred to as. *Id.* 212 (216).

CONCURRENCE.

Rates published without concurrence of certain lines. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (489).

CONFISCATION.

Of cars by connecting line. *O. & N. W. Ry. Reconsignment Rules*, 620 (623).

CONGESTION.

Of traffic caused by strike. *American Hay Co. v. O. V. Ry. Co.* 659 (661).

CONGRESSIONAL RESOLUTION. See also SENATE RESOLUTION.

Investigation in accordance with. *St. Louis & San Francisco Railroad Investigation*, 139.

CONNECTING CARRIERS.

Refusal to transport for complainant railroad company interstate shipments from and to industries on defendant's lines at New Castle, Pa., while transporting similar traffic for other carriers there, held to be undue discrimination in violation of section 3, *B. R. & P. Ry. Co. v. P. Co.* 114 (118).

Right of carrier to protect its terminals against its competitors. *Botsford & Barrett v. P. R. R. Co.* 469 (472).

CONSIGNEE.

Disclosing to, name of original consignor, lawfulness of. In re Freight Bills, 496 (498).

Unlawful to disclose information concerning. Id. 496 (498).

CONSIGNOR.

Question raised as to the lawfulness of disclosing to consignee name of original consignor. In re Freight Bills, 496 (498).

CONSOLIDATED SHIPMENTS. See CONCENTRATION; TRANSIT PRIVILEGES.**CONSTRUCTIVE MILEAGE.**

Two water miles reckoned as one rail mile New York, Philadelphia, and Baltimore to Norfolk; three for one to more southern ports. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (490, 494).

Baltimore to Atlanta ocean-and-rail, 510 miles. Id. 476 (488).

Mileage across bridge. Norman Lumber Co. v. L. & N. R. R. Co. 565 (570).

Over Ohio River bridge at Cairo estimated at 112 miles. Paducah Board of Trade v. I. C. R. R. Co. 583 (591).

CONSTRUCTIVE RATE.

Method of obtaining. Pacific Creamery Co. v. S. P. Co. 405 (407); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432).

CONTRACTS.

Whether Commission is authorized to determine question of reparation on a compromise basis, not decided; but held that complainant should accept the compromise sum, though no order entered. Eastman, Gardiner & Co. v. I. C. R. R. Co. 94 (97, 98).

Fact that contracts have been entered into on the basis of a lower rate does not of itself preclude the increasing of such rate. Rates on Crushed Stone, 136 (137).

The reasonableness of rates must be determined irrespective of contractual obligations of a particular shipper. Straw Rates from Stations in Missouri, 562 (563).

"CONVEYANCE."

Defined. Industrial Railways Case, 212 (235).

COOLEY ARBITRATION.

Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (482).

COOPERATIVE ELEVATORS.

R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co. 396 (398).

COST FIGURES.

That are mere approximations are not reliable factors upon which to determine the reasonableness of rates. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432).

COST OF ASSEMBLING.

Of raw material, disadvantages of, no basis for lower rates. Pardee Works v. C. R. R. Co. of N. J. 500 (502).

COST OF CONSTRUCTION.

Considered in determining reasonableness of rate. Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

COST OF EQUIPMENT.

Urged as defense against reduction. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (485).

COST OF HANDLING PARTICULAR COMMODITY.

Difficulty of determining with accuracy. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (434).

COST OF IMPROVEMENTS.

Accomplished only by heavy outlays of capital on which interest must be paid.

Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432, 436).

"COST OF ROAD AND EQUIPMENT."

Discussed. St. Paul and Puget Sound Accounts, 508 (510).

COST OF SERVICE.

Industrial switching. Does not justify increased charges for transit privilege.

Fabrication-in-transit Charges, 70 (78, 80).

Increase in cost of operation in Arizona due to inadequacy of water supply.

Pacific Creamery Co. v. A. T. & S. F. Ry. Co. 405 (407).

As basis of bridge charge. Norman Lumber Co. v. L. & N. R. R. Co. 565 (570).

Rates above and therefore do not create a charge on other traffic. Fort Scott

Industrial Asso. v. St. L. & S. F. R. R. Co. 629 (632).

Cost of operation is large on account of heavy grades. Hughes Creek Coal Co. v.

K. & M. Ry. Co. 671 (678).

Cost due to switching movement is very small, and may not properly be made the basis of an additional charge for a two-line haul of substantial length. Id.

671 (678).

Heavy proportion of burden on single commodity. Fabrication-in-transit Charges, 70 (83).

Considered in determining rate adjustment. Commercial Club of Terre Haute v. V. R. R. Co. 383 (389).

In determining reasonableness of rate. Crowds Bros. v. A. T. & S. F. Ry. Co.

449 (454); Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (480, 485). Young-

town Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432).

COUPONS.

Redemption of unused coupons of mileage books. Miller v. A. C. L. R. R. Co. 526 (529).

"CROP-HOLDING RULE".

Of car distribution, described. R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co. 396 (399).

CROSS-COUNTRY COMPETITION.

Where a carrier has voluntarily recognized cross-country competition, upon a subsequent increase being made, it becomes the duty of the Commission to determine whether such increased rates are reasonable for the service rendered.

Lumber Rates from Local Points to Chattanooga, 646 (648).

CUBIC FEET EARNINGS.

Lake-and-rail Butter and Egg Rates, 45 (50).

CURVES.

Elimination of. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432, 436).

"CUT-OVER REGION".

Lumber Rates from the Southwest to Points North, 1 (3).

DAMAGED GOODS.

Rates found not unreasonable. Danciger v. P. C. C. & St. L. Ry. Co. 99.

DAMAGES.

Nothing in the act warrants a presumption that a complainant has been damaged by some violation of the act. New Orleans Board of Trade v. I. C. R. R. Co. 32 (33).

Before any party can recover under the act he must show not merely the wrong of the carrier, but that the wrong has in fact operated to his injury. Id. 32 (33).

Upon failure or proof of damages as a result of discrimination found by the Commission, claim for reparation dismissed. Id. 32 (34).

DAMAGES—Continued.

Mere proof of specific shipments made and the amount for which reparation is sought does not make out a prima facie case when a discrimination in rate or service is the basis of the complaint. *Id.* 32 (33, 34).

The fact of damage as well as the amount of damages claimed must be established and that by such evidentiary facts as would be required to sustain such a recovery before a court of law. *Id.* 32 (34).

Parties: Commission merchants who paid demurrage but charged the same back to the shipper are not entitled to reparation for a wrongful exaction of demurrage charges. *New York Hay Exchange Asso. v. L. V. R. R. Co.*, 90 (92).

Compromise of reparation claims growing out of the Tift and Central Yellow Pine Association cases, approved by Commission. *Eastman, Gardiner & Co. v. I. C. R. R. Co.* 94.

Held that complainant should accept compromise sum by way of reparation. *Id.* 94 (97, 98).

Overcharge: awarded. *Norcross Bros. Co. v. L. & N. R. R. Co.* 109 (112).

Long and short haul: Rates held to be in violation of section 4; but damages denied because no proof of damage. *Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co.* 120 (122).

Rule concerning ascertainment of weight held unreasonable, but damages denied. *Schenck v. N. & W. Ry. Co.* 125 (128).

Rate found unreasonable, but damages denied. *Maier & Co. v. S. P. Co.* 103 (105); *Swift & Co. v. P. R. R. Co.* 464 (468); *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (582); *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (693).

Rate found unreasonable, damages awarded. *Lee v. St. L. S. W. Ry. Co.* 101; *Weisse & Co. v. C. H. & D. Ry. Co.* 374; *International Agricultural Corporation v. L. & N. R. R. Co.* 391; *Botsford & Barrett v. P. R. R. Co.* 469 (472); *Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co.* 473; *Stone & Son v. S. Ry. Co.* 699 (701).

Rate found unreasonable, damages to be awarded. *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449; *Swift & Co. v. P. R. R. Co.* 464 (467).

Complainant denied reparation where parties entitled were separate and distinct, notwithstanding that complainant was a stockholder therein. *International Agricultural Corporation v. L. & N. R. R. Co.* 391 (393).

Consignor is entitled where consignee who paid charges was reimbursed by consignee. *Id.* 391 (392).

The damages should be apportioned upon the basis of the rate established and the divisions of that rate; each carrier should pay such sum as the amount actually received by it exceeds the amount which it would have received had the rate fixed by the Commission been applied. Carriers may submit this matter to Commission if unable to agree. *Id.* 391 (392).

In awarding reparation the Commission never attempts to determine, in cases like this, in what proportion payment should be made by the various carriers participating in the transportation, but awards for a gross sum against all the carriers. *Id.* 391 (392).

Jurisdiction: Damages awarded on ground of unreasonableness of rate without establishing a rate for the future. *Stone & Son v. S. Ry. Co.* 699 (701).

DELIVERY. See also SWITCHING.

And pick up service discussed. *Industrial Railways Case*, 212 (235).

Of carload freight to shipper having private siding, what constitutes. *Id.* 212 (225).

Of property, freight bill as prima facie evidence. *In re Freight Bills*, 496.

DELIVERY CHARGE.

Absorption of industrial delivery charge. *Lumber Rates from Local Points to Chattanooga*, 646 (649).

DEMURRAGE.

Elimination of demurrage as a transportation charge against industries, held to constitute an undue and unreasonable preference and advantage. *Industrial Railways Case*, 212 (237).

Remission of demurrage charges to industrial roads performing a plant facility or shipper's service held to be unlawful. *Id.* 212 (213).

Entirely eliminated as a transportation charge to industries with short line under per diem reclaim arrangements. *Id.* 212 (233).

Charges held to be unlawfully exacted where cars which were not subject to an embargo were detained. *New York Hay Exchange Asso. v. L. V. R. R. Co.* 90 (92).

No evidence that charges were unreasonable. *Botsford & Barrett v. P. R. R. Co.* 469 (470).

No demurrage on shipments detained in outer yards of carriers because of cramped condition of delivery tracks. *C. & N. W. Ry. Reconsignment Rules*, 620 (622).

Bunching: rule providing for exemption from demurrage charges when same accrue on account of bunching required to be incorporated in tariff. *American Hay Co. v. C. V. Ry. Co.* 659.

Refund on cars diverted during strike. *Id.* 659 (663).

Admitted by defendant that no demurrage should have been assessed during strike. *Id.* 659 (662).

Notice: complainant should have been notified within 24 hours after arrival that cars had been constructively placed. *Id.* 659 (663).

Uniform Demurrage Code, Rule 8, sec. B-2. *Id.* 659 (662).

Free time on export traffic at New York. *Id.* 659 (661).

Demurrage charges on account of strike. *Id.* 659 (661).

Burden on carrier to show reasonableness in this case. *Id.* 659 (660).

Defendant's tariff rule, limiting storage of hay at pier No. 29, East River, N. Y., to no more than five carloads for any one consignee, any cars in excess of that number to be held at New London, Conn., or other points subject to storage or demurrage charge of \$1 per car per day, not found unreasonable or unjustly prejudicial. *Id.* 659.

DENSITY OF TRAFFIC.

Urged as element to be considered in determining reasonableness of rate. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (21).

Greater in vicinity of Oklahoma City than on any other part of the C. R. I. & P. Ry. in the state. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (130).

Should and ordinarily does result in lowering rates. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

Differs east and west of Chicago. *Interior Iowa Cities Case*, 536 (537).

Line operated through mountainous and sparsely populated territory is clearly at a disadvantage. *Rates to North Carolina Points*, 550 (556, 557).

East of Mississippi River contrasted with sparsity of traffic west thereof. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (586).

DESCRIPTION.

Of property should be specified in freight bill. *In re Freight Bills*, 496 (497).

DESTINATION.

Different export rates dependent upon different foreign destinations, not unlawful per se. *Erickson Co. v. C. M. & St. P. Ry. Co.* 414 (416).

DESTROYED TICKETS.

Redemption. *Miller v. A. C. L. R. R. Co.* 526.

DETENTION OF CARS.

Charging for, in connection with industrial switching. *Fabrication-in-transit Charges*, 70 (80).

DEVICE.

Transit privilege. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (378).

DIFFERENTIALS.

Between groups. Lumber from the southwest to Points North, 1 (12).

Discussed. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Revision of present flat differential on traffic from Memphis suggested. *Atlanta*

Freight Bureau v. N. C. & St. L. Ry. 476 (477).

Between Atlanta and Birmingham. *Id.* 476 (479, 487).

Ocean-and-rail rates to Atlanta. *Id.* 476 (491).

Ohio River Crossings, St. Louis and Memphis to Carolina territories.

Rates to North Carolina Points, 550 (552).

Diminish with the increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination. *Norman Lumber Co. v. L. & N. R. R. Co.* 565.

Baltimore under New York to Chicago. Rates on Potash and other Commodities, 626 (627).

DIRECT LINE.

Rates Cincinnati to Atlanta over Birmingham. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (481, 485).

Frisco has met rates of, between the rivers to Kansas City. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (603).

DIRECTION. *See BOTH DIRECTIONS.***DISADVANTAGE.** *See ADVANTAGES AND DISADVANTAGES; PREFERENCES AND PREJUDICES.***DISCLOSING INFORMATION.**

Unlawful to disclose name of consignee. *In re Freight Bills*, 496 (498).

Disclosing to consignee name of original consignor, lawfulness of. *Id.* 496 (498).

DISCRIMINATION. *See also CONNECTING CARRIERS; REFERENCES AND PREJUDICES.*

Resulting from payment of allowances to industrial roads of some plants while paying none to others. *Id.* 212 (213, 230).

DISSIMILAR CIRCUMSTANCES. *See CIRCUMSTANCES AND CONDITIONS.***DISTANCE.** *See also AVERAGE MILEAGE RATES; CONSTRUCTIVE MILEAGE.*

Short line distance, Pittsburgh to St. Louis. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (130).

Mean distance from extreme producing points to creamery. *Pacific Creamery Co. v. S. P. Co.* 405 (406).

Average distance considered in determining reasonableness of rate. *Id.* 405 (410); *Pardee Works v. C. R. R. Co. of N. J.* 500 (502).

Mile for mile, the through rate might be lower than for short distances. *Duluth Log Rates*, 420 (422).

Pro-rating distance ocean-and-rail. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (490).

Rate-making distance ocean-and-rail. *Id.* 476 (490).

Differentials vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination. *Norman Lumber Co. v. L. & N. R. R. Co.* 565.

Air-line distance. Lumber Rates from Local Points to Chattanooga, 646 (647).

Where distances of over 500 miles are involved, fact of two-line movement is largely negligible. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

DISTANCE—Continued.

Ton per mile revenue should decrease as haul increases. Lumber Rates from the Southwest to Points North, 1 (18); Wichita Board of Trade *v. A. & S. Ry. Co.* 376 (377); Pardee Works *v. C. R. R. Co. of N. J.* 500 (502); Interior Iowa Cities Case, 536 (537); Colorado Mfrs. Asso. *v. A. T. & S. F. Ry. Co.* 544 (545).

Considered in determining reasonableness of rates. Oklahoma Traffic Asso. *v. A. T. & S. F. Ry. Co.* 129 (134); Youngstown Sheet & Tube Co. *v. P. & L. E. R. R. Co.* 428 (429); Crowds Bros. *v. A. T. & S. F. Ry. Co.* 449 (454); Atlanta Freight Bureau *v. N. C. & St. L. Ry.* 476 (481, 487); Cedar Rapids Commercial Club *v. C. R. I. & P. Ry. Co.* 539 (541); Norman Lumber Co. *v. L. & N. R. R. Co.* 565 (574); Springfield Traffic Bureau *v. St. L. & S. F. R. R. Co.* 600 (602); Paducah Board of Trade *v. I. C. R. R. Co.* 593 (595); Fort Scott Industrial Asso. *v. St. L. & S. F. R. R. Co.* 629 (630); Rates on Flaxseed from Minneapolis to Fredonia, 633 (636); Boxboard Rates from Wilmington, 694 (695).

DISTANCE SCALE.

Prescribed by state commission used as factor. Fort Scott Industrial Asso. *v. St. L. & S. F. R. R. Co.* 629 (631).

DISTURBANCE OF ADJUSTMENT.

Rates not disturbed by Commission where result of order would be to disrupt rates on millions of tons of coal. Youngstown Sheet & Tube Co. *v. P. & L. E. R. R. Co.* 428 (435).

Where particular rate is unreasonable, it should be reduced notwithstanding the fact that a disturbance of adjustment may result; but there is a presumption of reasonableness that attaches to a long maintained adjustment of rates. *Id.* 428 (437).

Adjustment not disturbed by Commission; rates not being found unreasonable or unjustly discriminatory. Springfield Traffic Bureau *v. St. L. & S. F. R. R. Co.* 600 (606).

DIVERSION.

No demurrage charge on shipments diverted during strike. American Hay Co. *v. C. V. Ry. Co.* 659 (663).

DIVERSION PRIVILEGE.

Enjoyed without charge by Kansas miller. Kansas-California Flour Rates, 459 (460).

DIVISION OF RATES.

That a rate increase is for the purpose of securing a greater division, deemed a fair return, to a terminal line, is no justification for the increase. Rates on Crushed Stone, 136 (137, 138).

To industrial roads performing a plant facility or shippers service held to constitute an undue preference to the favored industries and subject other industries to an undue prejudice. Industrial Railways Case, 212.

Referred to as a mere matter of bookkeeping. Erickson Co. *v. C. M. & St. P. Ry. Co.* 414 (416).

Effect of water competition on water carriers' divisions. Atlanta Freight Bureau *v. N. C. & St. L. Ry.* 476 (490).

Between rail and water lines. *Id.* 476 (490).

Not forceful evidence of unreasonableness of rate. Charges being reasonable, division of rate between carriers is not usually of special interest to public, though in some cases divisions may have controlling significance. Pardee Works *v. C. R. R. Co. of N. J.* 500 (502).

Shipper paying division only, and not local rate. Lumber Rates from Oregon and Washington, 609 (616).

If carriers are unable to agree, they may submit matter to Commission. International Agricultural Corporation *v. R. Co.* 391 (392); Wichita Business Asso. *v. K. C. M. & O.*

DIVISION OF RATES—Continued.

Shipper has no interest in question of divisions. *Id.* 669 (670).

Cancellation of through routes and joint rates due to failure to agree upon divisions. *Id.* 669 (670).

DOCK-STORAGE.

Charges at New York. *American Hay Co. v. C. V. Ry. Co.* 659.

DOMESTIC RATES.

Much higher than export rates. *Erickson Co. v. C. M. & St. P. Ry. Co.* 414 (415).

Higher than import rates have been disapproved by Commission. Rates on Potash and other Commodities, 626 (628).

DRAYAGE.

Charges, freight bill should specify. *In re Freight Bills*, 496 (497).

DUMPING CHARGE.

Assessed on ore in addition to rate. *Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co.* 62 (63).

EARNING POWER.

Rate remaining unchanged for ten years has lost its earning power, expenses having increased and net income decreased. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

EARNINGS. See also REVENUE: TON PER MILE REVENUE.

Per cubic feet. *Lake-and-rail Butter and Egg Rates*, 45 (50).

ECONOMIC REGULATIONS.

Effected at great expense. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432).

As to classification of operating expenses, etc. *St. Paul and Puget Sound Accounts*, 508 (509).

Reason for rehandling of lumber, discussed. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (566).

ELECTRIC ROAD.

Haul by, compared with wagon haul. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (67).

ELEVATORS.

Cooperative elevators. Distribution of cars to in times of shortage. *R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co.* 396 (398).

EMBARGO.

Posting notice. *New York Hay Exchange Asso. v. L. V. R. R. Co.* 90 (93).

Demurrage charges held to be unlawfully exacted where cars which were not subject to an embargo were detained. *Id.* 90 (92).

On hay at New York in 1912. *American Hay Co. v. C. V. Ry. Co.* 659 (660).

EMINENT DOMAIN.

Exercise of right of. *Industrial Railways Case*, 212 (235).

EMPLOYEES.

Health and wages of. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (435).

EMPTY CARS.

Fear that supply of empty equipment will be diminished in case of change of routes. *Lumber Rates through Ohio River Crossings*, 38 (39).

Could be used if through route is established. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (681).

Return upon. *Pacific Creamery Co. v. S. P. Co.* 405 (403).

Requisitions upon connections for empties accompanied with promise of return loads. *C. & N. W. Ry. Reconsignment Rules*, 620 (621).

ENGLAND.

Practices in regard to switching and spotting cars, discussed. *Industrial Railways Case*, 212 (235).

EQUALITY.

Increased transit charges will not be permitted where inequality would result.

Fabrication-in-transit Charges, 70 (80).

EQUALIZING CONDITIONS.

Commission ought not to attempt to equalize commercial conditions. *Kansas-California Flour Rates*, 459 (462).

EQUALIZING DIFFERENTIALS.

Discussed. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (576).

EQUALIZING RATES.

Discussed. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (390).

That a transit privilege tends to equalize rates of the interior fabricator with those of plants located at rate-breaking points, argues for a continuance of such privileges. *Fabrication-in-transit Charges*, 70 (77).

EQUIDISTANT POINTS.

Rates to offset by bridge toll. *Norman Lumber Co. v. L. & N. R. R. Co.* 565; *Paducah Board of Trade v. I. C. R. R. Co.* 583.

EQUIPMENT. See also CARS; CAR FURNISHING.

Inadequacy of, question presented but withdrawn. *R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co.* 396 (397).

Heavier, cost of, referred to. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432, 436).

Special. Protection of Potato Shipments in Winter, 504 (506).

No obligation to furnish special equipment that would remain idle half the year. *C. & N. W. Ry. Reconsignment Rules*, 620 (624).

EQUITY.

That a short-line is violating the commodities clause is no defense to a charge of unjust discrimination. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (693).

ERROR.

Rate published through error. *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424 (426).

ESTOPPEL.

That contracts have been entered into on the basis of a lower rate does not preclude the increasing of such rate. *Rates on Crushed Stone*, 136 (137).

Carrier not estopped to advance a rate because of its agreement to maintain a lower rate. Doubtful whether evidence of this nature should be received at all. *Duluth Log Rates*, 420 (421).

EVIDENCE.

Hearsay evidence. *Lumber Rates from the Southwest to Points North*, 1 (15).

Of matter of supposed estoppel. *Duluth Log Rates*, 420 (421).

A long maintained rate is presumptively reasonable. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Strict rule of evidence, shifting burden of proof where defendant fails to rebut evidence of complainant, not applied. *Id.* 428 (435).

Through bill of lading, evidence of existence of through route. *Swift & Co. v. P. R. R. Co.* 464 (466).

Lack of direct evidence. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (484).

Freight bill as prima facie evidence of payment and of delivery of property.

In re Freight Bills, 496.

In record of another case, referred to. *Miller v. A. C. L. R. R. Co.* 526 (528).

EX PARTE.

Action of one party can not preclude another from ascertaining true weight of shipment. *Schenck v. N. & W. Ry. Co.* 125 (127).

EXPEDITED SERVICE.

Considered in determining reasonableness of rate. *Kansas-California Flour Rates*, 459 (462).

EXPENSE BILLS.

In connection with transit privilege. *Fabrication-in-transit Charges*, 70 (73).

Referred to. *Rates on Flaxseed from Minneapolis to Fredonia*, 633 (634).

EXPENSE OF OPERATION.

Of steamer. *Atlanta Freight Bureau v. N. C. & St. L. Ry. Co.* 476 (490).

EXPORT.

Free time on export traffic at New York. *American Hay Co. v. C. V. Ry. Co.* 659 (661).

EXPORT RATES.

Inland proportion of through rates on commodities from Chicago, Ill., via Vancouver, B. C., on traffic destined to Australia exceeds the inland proportion from the same point of origin to Japan, etc. Held, that the different export rates do not result in undue prejudice. *Erickson Co. v. C. M. & St. P. Ry. Co.* 414.

Commission has never held that it is per se unlawful to publish different export rates, dependent on the foreign destination. *Id.* 414 (416).

Charging different rates when traffic is intended for different foreign destinations for the movement from the same interior point to the same port of transshipment is an unjust discrimination in violation of section 3. *New Orleans Board of Trade v. I. C. R. R. Co.* 32.

EXPRESS COMPANIES.

Not liable as for misrouting where instructions of shipper are followed. *Brackett Co. v. G. N. Express Co.* 667 (668).

EXTRA SERVICE.

Switching classed as. *Industrial Railways Case*, 212 (235).

FABRICATION.

Defined. *Fabrication-in-transit Charges*, 70 (73).

FACILITIES. *See also* CONNECTING CARRIERS; TERMINALS; CARS.

Duty of carrier to furnish, under section 1. *Lumber Rates through Ohio River Crossings*, 38 (39).

Lack of. *Concentration of Cotton at Points in Arkansas*, 106 (107).

Inadequacy of, question presented but withdrawn. *R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co.* 396 (397).

Special equipment. *Protection of Potato Shipments in Winter*, 504 (506).

FACTOR OF THROUGH RATE. *See* COMBINATION RATE.**FACTORY DOOR DELIVERY.**

Of carload freight. *Industrial Railways Case*, 212 (226).

FALSE BILLING.

To secure lower rates. *Norcross Bros. Co. v. L. & N. R. R. Co.* 109 (112).

FALSE FLOORS.

Furnished by shipper at his own expense. *Protection of Potato Shipments in Winter*, 504.

FEES.

Attorney, Commission no power to award. *Botsford & Barrett v. P. R. R. Co.* 469 (472).

FERRY.

Capacity of ferry at New York. *American Hay Co. v. C. V. Ry. Co.* 659 (660).

FILING RATES.

Transporting articles without filing rate therefor. *Lee v. St. L. S. W. Ry. Co.* 101 (102).

FINANCIAL CONDITION.

Of carrier urged as reason why its rates should not be disturbed. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (20).

Of one of participating carriers can not be taken as the sole measure of a reasonable rate. *Id.* 18 (27).

Of *St. L. & S. F. R. R. Co.* Discussed. *St. Louis and San Francisco R. R. Investigation*, 139.

Of defendant referred to in determining reasonableness of rate. *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (434).

Prosperous financial condition of road considered in determining reasonableness of rate. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (480).

Concealing facts in classification of accounts, etc. *St. Paul and Puget Sound Accounts*, 508 (509).

FIXED CHARGES.

Increase in. *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

FLAT DIFFERENTIAL.

On all classes alike through Memphis does not appear to be justified. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (487).

FLAT PER-CAR RATES.

Provision for minimum weights for different sizes of cars preferable. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (27).

FLAT RATE.

Used as factor in through rate. Rates on Flaxseed from Minneapolis to Fredonia, 633 (634).

"FLEXIBLE LIMIT OF JUDGMENT."

Which belongs to the power to fix rates. *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (435).

FLUCTUATION OF RATES.

Due to competition. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (481).

FOREIGN COMMERCE. See EXPORT RATES.**FOREIGN-LINE REFRIGERATORS.**

Necessary to handle traffic to points off line. *C. & N. W. Ry. Reconsignment Rules*, 620 (621).

FORMS.

Of freight bills. *In re Freight Bills*, 496 (499).

FREE SERVICES.

Whether additional charge should be made for free store-door delivery and other free services, not now determined. *Industrial Railways Case*, 212 (227).

For industrial roads. *Id.* 212 (213).

FREE STORAGE. See STORAGE.**FREE TRANSPORTATION. See also PASSES.**

Of caretaker as an additional service. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (23).

FREIGHT BILLS.

Form of freight bills approved and its general use recommended by Commission. *In re Freight Bills*, 496.

Power of Commission under section 20 to prescribe form and substance, not questioned herein. *Id.* 496 (497).

What freight bills should contain, specified. *Id.* 496 (497).

Function of, stated. *Id.* 496.

FUEL.

To protect perishable freight. *Protection of Potato Shipments in Winter*, 504.

FURNACE ALLOWANCES.

To industrial roads. *Industrial Railways Case*, 212 (213, 231).

GAS BELT.

Rates adjusted in gas belt of Indiana. *Mississippi River Case*, 530 (534).

GATEWAYS.

Cincinnati is a natural gateway for traffic moving to Atlanta. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (481).

Lumber Rates from the Southwest to Points North, 1; *Southwestern Missouri Millers Club v. St. L. & S. F. R. R. Co.* 28 (31); *Emigrant Movables to South Dakota*, 40 (42); *Lake-and-rail Butter and Egg Rates*, 45 (48); *Duluth Log Rates*, 420 (422); *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (451); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (488); *Mississippi River Case*, 530 (534); *Interior Iowa Cities Case*, 536 (537); *Rates to North Carolina Points*, 550 (553); *Lumber Rates from Oregon and Washington*, 609 (617); *Rates on Green Fruit from Idaho, etc.* 650; *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (677).

GEOGRAPHICAL LOCATION. See LOCATION; ADVANTAGES AND DISADVANTAGES.**GERMANY.**

Practice as to industrial switching or spotting. *Industrial Railways Case*, 212 (235).

GRADED RATES.

Rates slightly higher to more distant points. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28 (30).

Westward from Albuquerque, N. M. *Arizona Corporation Commission v. A. & N. M. Ry. Co.* 424 (425).

Rates from Chicago to Mississippi River should be graded back across state of Iowa to rates at Mississippi River. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 539.

Interstate mileage scale is graded. *Lumber Rates from Local Points to Chattanooga*, 646 (648).

Class rates grade upward from St. Louis westward. *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (631).

GRADES.

Cost of reducing. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432, 436).

Considered in determining reasonableness of switching charge. *Botsford & Barrett v. P. R. R. Co.* 469 (472).

Heavy grades considered in determining reasonableness of rate. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678); *Pacific Creamery Co. v. S. P. Co.* 405 (407).

GRADING IN TRANSIT.

Lumber at Louisville, Ky. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (566).

GROSS INCOME.

Of road outstripped by increased expenses. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

GROUP RATES.

Change of grouping in some particulars approved, and in others disapproved by Commission. *Lumber Rates from Southwest to Points North, 1.*

Found unreasonable and unjustly discriminatory. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28 (30).

On lumber for export not found unreasonable. *Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co.* 120 (121).

Grouping system, discussed. *Pacific Creamery Co. v. S. P. Co.* 405 (406).

On hides and pelts. *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (452).

On wheat and flour. *Kansas-California Flour Rates*, 459.

GROUP RATES—Continued.

Territorial groups containing corresponding distances offered for comparison.

Atlanta Freight Bureau *v.* N. C. & St. L. Ry. 476 (484).

On scrap iron and steel billets from New England to Perth Amboy, N. J., attacked as unlawful in depriving complainant of benefit of natural location, held not unreasonable or unduly prejudicial. *Pardee Works v. C. R. R. Co. of N. J.* 500 (501).

Removal of Emlenton, Pa., from the Buffalo to the Pittsburgh group, held to be justified. *Emlenton Petroleum Rates*, 519 (520).

Contention made that change of differential would go counter to rate-grouping system prevalent in c. f. a. territory. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (576).

Involved. *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424 (425); *Paducah Board of Trade v. I. C. R. R. Co.* 583 (592); *Stone & Son v. S. Ry. Co.* 699.

On coal. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (675).

On strawboard, etc. *Boxboard Rates from Wilmington*, 694.

Propriety of relation between Jellico and Coal Creek group rates on coal, not questioned. *Stone & Son v. S. Ry. Co.* 699 (701).

HEARING.

Evidence in record in another case referred to. *Miller v. A. C. L. R. R. Co.* 526 (528).

Point raised at hearing and in briefs and arguments which was not presented in complaint. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (580).

HEARSAY EVIDENCE.

Lumber Rates from the Southwest to Points North, 1 (15).

HEATING.

A tariff that offers a protected service, in special equipment, for shipments of potatoes in winter at the risk of the carrier for weather damages and at the same time permits the shipper, at a lower rate and at his own risk, to furnish his own protection, not found to be unlawful or unreasonable. *Protection of Potato Shipments in Winter*, 504.

HORIZONTAL ADVANCE.

Lumber Rates from the Southwest to Points North, 1 (3).

"HOUSE RULE."

Of car distribution. *R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co.* 396 (399).

IDENTIFICATION.

Of shipment by freight bill. *In re Freight Bills*, 496.

IDENTIFYING CARS.

For plant delivery. *Industrial Railways Case*, 212 (236).

IMPORT RATES.

Below contemporary domestic rates have been disapproved by Commission. *Rates on Potash and Other Commodities*, 626 (628).

Increased rates on imported salt from North Atlantic ports to destinations in c. f. a. territory, not justified. *Id.* 626.

Urged to be a special rate and not measure of normal rate. *Id.* 626 (627, 628).

IMPROVEMENTS.

Unfair to deprive carrier of profits resulting from improvements in plant and adoption of modern methods. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432, 436).

Expenditure of much money for, alleged. *Lumber Rates from Oregon and Washington*, 609 (615).

IN AND OUT RATES.

- Adjustment of. Fabrication-in-transit Charges, 70 (75).
- On grain from Kansas City less than from original point of origin to destination. Wichita Board of Trade v. A. & S. Ry. Co. 376 (378).
- Rehandling yards at Paducah unable to compete with those at Cairo. Paducah Board of Trade v. I. C. R. R. Co. 583 (584).

INBOUND BILLING.

- Discussed. Fabrication-in-transit Charges, 70.

INCORPORATION.

- Of plant railways, discussed. Industrial Railways Case, 212 (234).

INDUSTRIAL DELIVERY.

- Charge, absorption of. Lumber Rates from Local Points to Chattanooga, 646 (649).

INDUSTRIAL RATES.

- That shippers have invested capital in establishing mills upon an understanding that certain rates were to be maintained, does not prevent the carrier from charging a reasonable rate. Lumber Rates from the Southwest to Points North, 1 (15).
- That vested interest will be impaired by a readjustment of rates is no valid reason for not correcting an inequitable condition. Santa Rosa Traffic Asso. v. S. P. Co. 65 (66).
- That money has been invested in an industry in reliance upon the continuance of transit privileges argues for a maintenance of such privilege. Fabrication-in-transit Charges, 70 (77).
- Rate increased after industry built upon basis of lower rate. Duluth Log Rates, 420 (421).
- That money has been invested on the strength of a given rate does not preclude the increase of such rate if it is unreasonably low. Lumber Rates from Local Points to Chattanooga, 646 (647).

INDUSTRIAL ROADS. For list see **SHORT LINES.**

- Held to be performing a plant facility or shipper's service, and that the payment of an allowance to such roads either by means of divisions of the rate, per diem reclaims, the remission of demurrage charges, etc., constitutes an undue and unreasonable preference to the industries so favored and subjects other industries to an undue prejudice. Industrial Railways Case, 212.
- Depletion of railroad revenues from paying of allowances, etc., to industrial roads, discussed. Id. 212 (214).
- Allowances to: Referred to as concessions and rebates. Id. 212 (216, 231, 237).
- Have been the outgrowth of competitive conditions, Id. 212 (230).
- Have no relation to rate. Id. 212 (231).
- Allowances to and free services for proprietary industries have materially increased operating expenses of carriers. Id. 212 (217).
- Character of, described. Id. 212 (220).
- Identity in ownership of plants and industrial roads serving them. Id. 212 (221).
- Relocation of trunk line tracks at industries, discussed. Id. 212 (222).
- Plant railways as an industrial necessity, discussed. Id. 212 (224).
- Not one of industrial roads herein is a terminal railroad. Id. 212 (227).
- Public services of, discussed. Id. 212 (227).
- Undue preferences and unjust discrimination result from allowances to industrial roads. Id. 212 (230).
- Furnace allowances to. Id. 212 (231).
- Evidence adduced that railroads never made industrial road allowances voluntarily. Id. 212 (231).

INDUSTRIAL ROADS—Continued.

Pooling arrangements between trunk lines performing industrial service. *Id.* 212 (231).

Per diem reclaims to, discussed. *Id.* 212 (231).

Relief from demurrage charges by per diem reclaims, discussed. *Id.* 212 (233).

Spotting and switching cars by line carriers. *Id.* 212 (233).

Incorporation of. *Id.* 212 (234).

Facilities used by an industry in performing service beyond a reasonable interchange point with the line carrier, whether incorporated or not, are plant facilities and plant equipment. *Id.* 212 (237).

Relation to industry. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (683).

Questions as to the status of the railroad and the industry and the character of transportation afforded are difficult to determine under the present record. *Id.* 682 (686).

Maintenance of main-line or district rates on bituminous coal from points on one short line while denying such rates to points on another short line, held to constitute undue prejudice. *Id.* 682 (689).

INDUSTRIAL TRACKS.

What constitutes delivery on. *Industrial Railways Case*, 212 (225).

INFORMAL COMPLAINT. *See* LIMITATION OF ACTIONS.

INFORMATION. *See* DISCLOSING INFORMATION.

INITIALS OF CARRIER.

Should be specified in freight bill. *In re Freight Bills*, 496 (497).

INSPECTION.

Of transit records; withdrawal of privilege for refusing. *Gadow v. C. St. P. M. & O. Ry. Co.*, 457.

INTERCHANGE OF TRAFFIC.

Refusal to transport traffic to and from complainant railroad company's lines held to be in violation of section 3. *B. R. & P. Ry. Co. v. P. Co.* 114 (118).

INTERCHANGE TRACKS.

Delivery upon, is delivery to industry. *Industrial Railways Case*, 212.

Delivery or acceptance of cars at. *Id.* 212 (229).

INTERCORPORATE RELATIONS.

Separation effected by pro rata distribution of stock. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (685).

The charge that since the C. & O. and the K. & M. are practically one road it is unjustly discriminatory for them to deny the K. & M. mines access to markets which have been made available to C. & O. mines held not to be established. For the purposes in question no such identity between the two roads has been proven. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (680).

INTEREST. *See also* PARTIES; INTERCORPORATE RELATIONS; OWNERSHIP; INDUSTRIAL ROADS; COMMODITIES CLAUSE.

Where carriers collect charges to which they are not entitled, they should pay interest as well as refund the principal itself. *International Agricultural Corporation v. L. & N. R. R. Co.* 391.

INTERMEDIATE RATES.

Herein should not exceed those fixed by Commission. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 539 (543).

INTERRIVER SCALE.

Application of to ocean-rail business from Atlantic seaboard territory. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (602).

INTERSTATE CARRIERS.

Boat lines make no pretense of being interstate carriers beyond mere concurrence in interstate railroad's tariffs. *Lumber Rates from Oregon and Washington*, 609 (618).

INTERVENERS.

In case before Commission. Fabrication-in-transit Charges, 70 (72); R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co. 396; Duluth Log Rates, 420; Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (429); Kansas-California Flour Rates, 459 (462); Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (493); Rates to North Carolina Points, 550 (555).

Denied reparation at supplemental hearing because of lack of proof of damage. New Orleans Board of Trade v. I. C. R. R. Co. 32.

Intervention permitted at rehearing. Santa Rosa Traffic Asso. v. S. P. Co. 65 (66). Application at rehearing for benefit of rates to which another point is entitled under a former order of Commission, denied on merits. Id. 65 (69).

INTERWORKS SWITCHING.

Burden of cost of operating plant railroad for. Industrial Railways Case, 212 (215).

INVESTIGATION.

Facts and circumstances concerning the purchase of the Chicago & Eastern Illinois and the St. Louis, Brownsville and Mexico railroads by the St. Louis & San Francisco Railroad Company, with other details, submitted, without expressions of opinion or recommendations by Commission. St. Louis & San Francisco Railroad Investigation, 139.

On Commission's own motion. Industrial Railways Case, 212 (220); In re Freight Bills, 496.

INVESTMENT. See also INDUSTRIAL RATES.

That shippers have invested capital in establishing mills upon an understanding that certain rates were to be maintained, does not prevent the carriers from charging a reasonable rate. Lumber Rates from the Southwest to Points North, 1 (15).

That vested interests will be impaired by a change of rate adjustment, is no valid reason for not correcting an inequitable condition. Santa Rosa Traffic Asso. v. S. P. Co. 65 (66).

That money has been invested in an industry in reliance upon the continuance of transit privileges, argues for the maintenance of such privilege. Fabrication-in-transit Charges, 70 (77).

That money has been invested on the basis of a given rate does not preclude the increase of such rate if it is unreasonably low. Lumber Rates from Local Points to Chattanooga, 646 (647).

IOWA DISTANCE SCALE.

Used as a factor in through rate. Interior Iowa Cities Case, 536.

IRRIGATION.

Cost of, in connection with wheat industry. Arizona Corporation Comm. v. A. & N. M. Ry. Co. 424 (427).

ISSUES. See also HEARING.

A question not presented by complaint or developed at hearing but raised for the first time in a brief, will not be decided. Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co. 28 (29).

Passing consideration given to point not directly in issue. Fabrication-in-transit Charges, 70 (73).

Point not in issue not passed upon. Norcross Bros. Co. v. L. & N. R. R. Co. 109 (112); Emlenton Petroleum Rates, 519 (521). Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (681).

Not clearly raised in the pleadings can not be determined by the Commission. Chicago Board of Trade v. A. T. & S. F. Ry. Co. 438 (444).

Relation of adjustment not before the Commission in broad way. Pardee Works v. C. R. R. Co. of N. J. 500 (502).

INDUSTRIAL ROADS—Continued.

Pooling arrangements between trunk lines performing industry v. R. R. Comm. 212 (231). *In re Thompson Street*

Per diem reclaims to, discussed. Id. 212 (231). *Western River Basin*

Relief from demurrage charges by per diem reclaims, discussed. *Id. 212 (231)*. *Western South*

Spotting and switching cars by line carriers. Id. 212 (233).

Incorporation of. Id. 212 (234).

Facilities used by an industry in performing service beyond

change point with the line carrier, whether incorporated facilities and plant equipment. Id. 212 (237). *Id. 212 (237)*

Relation to industry. *Campbell's Creek Coal Co. v. A. A. R. Co.* *Id. 212 (237)*

Questions as to the status of the railroad and the industry & transportation afforded are difficult to determine under Id. 682 (686). *Id. 682 (686)*

Maintenance of main-line or district rates on bituminous coal short line while denying such rates to points on another short line. *Id. 682 (689)*. *Id. 682 (689)*

INDUSTRIAL TRACKS.

What constitutes delivery on. *Industrial Railways Case, 212 (237)*. *Id. 212 (237)*

INFORMAL COMPLAINT. See **LIMITATION OF ACTIONS.**

INFORMATION. See **DISCLOSING INFORMATION.**

INITIALS OF CARRIER.

Should be specified in freight bill. *In re Freight Bills, 496 (49)*

INSPECTION.

Of transit records; withdrawal of privilege for refusing. *Gadsden & O. Ry. Co., 457*. *Gadsden & O. Ry. Co., 457*

INTERCHANGE OF TRAFFIC.

Refusal to transport traffic to and from complainant railroad held to be in violation of section 3. *B. R. & P. Ry. Co. v. Santa Fe*

INTERCHANGE TRACKS.

Delivery upon, is delivery to industry. *Industrial Railways Case, 212 (237)*. *Id. 212 (237)*

Delivery or acceptance of cars at. Id. 212 (229).

INTERCORPORATE RELATIONS.

Separation effected by pro rata distribution of stock. *Campbell's Creek Coal Co. v. A. A. R. R. Co. 682 (685)*. *Campbell's Creek Coal Co. v. A. A. R. R. Co. 682 (685)*

The charge that since the C. & O. and the K. & M. are practically unjustly discriminatory for them to deny the K. & M. mines which have been made available to C. & O. mines held not

For the purposes in question no such identity between the two proven. *Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (68)*. *Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (68)*

INTEREST. See also **PARTIES**; **INTERCORPORATE RELATIONS**; **INDUSTRIAL ROADS**; **COMMODITIES CLAUSE.**

Where carriers collect charges to which they are not entitled, interest as well as refund the principal itself. *International Corporation v. L. & N. R. R. Co. 391*. *Id. 391*

INTERMEDIATE RATES.

Herein should not exceed those fixed by Commission. *Cedar River Club v. C. R. I. & P. Ry. Co. 539 (543)*. *Id. 539 (543)*

INTERRIVER SCALE.

Application of to ocean-rail business from Atlantic seaboard to field Traffic Bureau v. St. L. & S. F. R. R. Co. 600 (602). *Id. 600 (602)*

INTERSTATE CARRIERS.

Boat lines make no pretense of being interstate carriers beyond in interstate railroad's tariffs. *Lumber Rates from Oregon 609 (618)*. *Id. 609 (618)*

ISSUES—Continued.

Point not presented in complaint but brought up at hearing in briefs and argument. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (580).

Through routes and joint rates can not be ordered in when complaint contains no prayer therefor. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (592).

Question as to divisions, not in issue. *Wichita Business Asso. v. K. C. M. & O. Ry. Co.* 669 (670).

JOINT AGENT.

Maintained at Dana by Campbell's Creek R. R. and K. & M. Ry. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (687).

JOINT PROPORTIONAL RATE.

Proposed cancellation of. Straw rates from Stations in Missouri, 562.

JOINT THROUGH RATES.

Proposed tariff change condemned which would result in joint through rates higher than the combination of intermediate rates. *Lumber Rates from the Southwest to Points North*, 1 (16, 17).

Substitution prohibited that will impair integrity of through rate. *Fabrication-in-transit charges*, 70 (87).

Required by law to be established in order that traffic may be moved without delays or the handicaps of reshipment. *Concentration of Cotton at Points in Arkansas*, 106 (108).

Compared with combination rate. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (133).

In excess of combination of intermediate rates, held unreasonable. *Weisse & Co. v. C. H. & D. Ry. Co.* 374 (375).

Usually lower than combination of intermediate rates. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (377).

On coarse salt from Cuylerville, N. Y., to Chicago Junction, through Akron, Ohio, required to be maintained. *Swift & Co. v. P. R. R. Co.* 464.

By ocean and rail. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (491).

Can not be ordered in when complaint does not contain prayer therefor. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (592).

Cancellation of by route over which respondent received shorter haul, justified. *Marble Rates from Vermont Points*, 607.

Cancellation of joint through rates on lumber in the northwest, permitted in some instances and not permitted in other instances. *Lumber Rates from Oregon and Washington*, 609.

Matter of joint rates is not dealt with alone in section 15, but Commission must read, together with that provision, those contained in sections 1 and 3. *Id.* 609 (618); *Rates on Green Fruit from Idaho, etc.*, 650 (651).

Propriety of cancellation of, to be determined in view of facts and circumstances of each case. *Id.* 650 (651).

Under all ordinary conditions a shipper has right to reasonable joint through rates to distant markets. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (677).

On coal from Kanawha district, W. Va., to certain destinations, denied in some instances and required to be established in others. *Id.* 671 (681).

Should be established to points on the short line herein if such rates are to be maintained to points on certain other short lines. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (689).

JUDGMENT.

Of rate-making body. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (435).

JUNCTION POINTS.

Rates to junction points referred to as parts of through rates. *Duluth Log Rates*, 420 (422).

Should be specified in stating routing in freight bill. *In re Freight Bills*, 496 (497).

JURISDICTION.

Rates: Not province of Commission to adjust rates to equalize natural or commercial disadvantages. *Lumber Rates from the Southwest to Points North*, 1 (16).

Complaint, seeking order requiring narrow-gauge line to restore part of tracks it had destroyed, dismissed for want of jurisdiction. *Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co.* 62 (64).

Rules, regulations and practices: Transit privileges. *Fabrication-in-transit Charges*, 70 (78).

Change in rules. *Id.* 70 (78).

Contract: Whether Commission is authorized to determine question of reparation on a compromise basis, not decided; but held that complainant should accept the compromise sum, though no order entered. *Eastman, Gardiner & Co. v. I. C. R. R. Co.* 94 (97-98).

Through routes: Power of Commission to establish through routes is limited by the act. *Wichita Board of Trade v. A. & S. Ry. Co.* 376

Tariffs: Commission's authority to permit waiver of tariff provision as to time limit for presenting claims to carriers. *In re Bills of Lading*, 417.

Traffic subject to act: Port-to-port water traffic. *St. Paul and Puget Sound Accounts*, 508 (517).

Through routes and joint rates discussed and former decision adhered to. *Lumber Rates from Oregon and Washington*, 609 (618).

LAKE-AND-RAIL. See WATER LINES.**LEASE.**

Perpetual lease of property. *Campbell's Creek Co. v. A. A. R. R. Co.* 682 (685).

LEGAL RATE.

Transportation without rate on file covering shipment. *Lee v. St. L. S. W. Ry. Co.* 101 (102).

Charges collected held to be in accordance with legal rate. *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664.

LEGITIMATE COMPETITION.

Tennessee cities are properly entitled to the advantages of. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (495).

LESS-THAN-CARLOAD RATES. See CARLOAD AND LESS-THAN-CARLOAD RATES.**LIABILITY. See LIMITATION OF LIABILITY.****LIGHTERAGE.**

At New York. *American Hay Co. v. C. V. Ry. Co.* 659 (660).

LIMITATION OF ACTION.

Complaint barred. *Schenck v. N. & W. Ry. Co.* 125.

Informal complaint stops bar. *International Agricultural Corporation v. L. & N. R. R. Co.* 391 (393).

The filing of a complaint by an agent, as in the *Youngblood* case (21 I. C. C. 569), stops the bar. *Id.* 391 (394).

A complaint by a voluntary association stops the bar only as to those specifically named therein. *Id.* 391 (394).

While parties other than original complainants may appear in a case the period of limitation is reckoned from the time when they appear as such parties on the record. *Id.* 391 (394).

LIMITATION OF ACTION—Continued.

Where a consignor brings complaint and the Commission finds that the reparation should be paid to the consignee, more than two years having elapsed, no recovery can be had by the consignee. *Id.* 391 (394, 395).

Time limit for presentation of claims for loss or damage. *In re Bills of Lading*, 417.

LIMITATION OF LIABILITY.

Shipment billed as finished marble, agreed to be of value of 40 cents per cubic foot, and upon which there was assessed a rate of 36½ cents per 100 pounds, applicable on that commodity at the agreed value stated, found to be sand-rubbed marble, which in defendant's tariffs is included in the description of rough marble and under an agreed value of 20 cents per cubic foot is entitled to a rate of 23½ cents per 100 pounds. Reparation awarded. *Norcross Bros. Co. v. L. & N. R. R. Co.* 109.

Agreed value is not misrepresentation of value when accepted by carrier on account of release of liability beyond agreed amount. *Id.* 109 (112).

Where different rates depend on value, undervaluation is in nature of false description of property. *Id.* 109 (112, 113).

Sometimes reasonable to make varying rates on same commodity dependent upon value. *Id.* 109 (112).

Law requires carriers to afford all shippers rates that are reasonable and unconditional as to the carrier's liability in case of loss or damage. *Id.* 109 (112).

Where rate depends upon release of carrier's liability, tariff should provide for exercise of choice of rates by means of a statement in bill of lading signed by shipper that shipment is released to value stated in tariff. *Id.* 109 (113).

Tariffs should clearly distinguish between rates based on value and rates based on release of carrier's liability to a certain amount. *Id.* 109 (112, 113).

A tariff that offers a protected service, in special equipment, for shipments of potatoes in winter at the risk of the carrier for weather damages and at the same time permits the shipper, at a lower rate and at his own risk, to furnish his own protection, not found unlawful or unreasonable. *Protection of Potato Shipments in Winter*, 504.

In their release-from-liability tariff provisions, carriers should make it plain that they will not seek in any event to escape responsibility for loss occasioned by their negligence or delay. *Id.* 504 (507).

No contract, receipt, rule or regulation may exempt a carrier from liability for loss or damage. *Id.* 504 (507).

Carriers are not prohibited from entering into reasonable contracts with shippers for a release from liability as an alternative to other tariff provisions under which carriers accept the responsibility. *Id.* 504 (507).

Reasonableness of 4 months' limit within which claims for damages must be filed, not passed upon. *In re Bills of Lading*, 417.

Waiver of provision in Uniform Bill of Lading limiting to 4 months the time within which claims for loss or damage or for delay must be presented by shippers. *Id.* 417.

LINE CARRIER.

Its service is confined to its own rails and delivery is made, at common law, just clear of its right of way. *Industrial Railways Case*, 212 (235).

LINE HAUL.

One and two line hauls, as justifying a difference in rates. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (21, 27).

Service in addition to line haul found to be full equivalent of additional service incident to transit. *Fabrication-in-transit Charges*, 70 (81).

Carrier's right to long haul. *Concentration of Cotton at Points in Arkansas*, 106 (108).

LINE HAUL—Continued.

The inbound carrier has a right to be concerned regarding the line of movement of traffic from a transit point. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (379).

Routing traffic to preserve. *Botsford & Barrett v. P. R. R. Co.* 469 (471).

Direct one-line haul is rate-making route. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (490).

Ton per mile yield on traffic involving long haul over two lines. *Interior Iowa Cities Case*, 536 (537).

A carrier can not reserve to itself the long haul if to do so works to the detriment of shippers. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591).

Cancellation of joint rate by route by which respondent received shorter haul, justified. *Marble Rates from Vermont Points*, 607.

If a railroad has traffic in its possession, it shall be allowed to handle it by its own line as far as it can unless the public interest will suffer thereby. *Id.* 607 (608).

Commission has no right, under the circumstances, to deprive originating carrier of its long haul. *Lumber Rates from Oregon and Washington*, 609 (612).

Long line. *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (632).

Where distances of over 500 miles are involved, fact of two-line movement is largely negligible. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

Two-line haul, usually justifies a higher total charge than a one-line haul. *Id.* 671 (678).

Where physical connection between connecting carriers is simple, involving no expensive terminal service, the additional cost due to the switching movement is very small and may not properly be made the basis of an additional charge for a two-line haul of substantial length. *Id.* 671 (678).

LINE RATE.

Switching charge assessed in addition to. *Chicago Board of Trade v. A. T. & S. F. Ry. Co.* 438 (446).

LINING CARS.

Protection of Potato Shipments in Winter, 504.

LOADING.

That an article loads heavily, considered in determining reasonableness of rate. *Duluth Log Rates*, 420 (422).

Average loading discussed in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Capacity of hides and pelts. *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (455).

Average load of wheat is 68,969 pounds, and of flour 52,888. *Kansas-California Flour Rates*, 459 (461).

Quality of article, considered in determining reasonableness of rate. *Pardee Works v. C. R. R. Co. of N. J.* 500 (503).

Heavy loading of tomatoes results in saving of equipment in times of car shortage. *Rates on Tomatoes from Jacksonville*, 522 (523).

Reloading charges after shipment unloaded for storage. *Parry & Co. v. P. R. R. Co.* 559.

Target shell load from 37,000 to 105,000 pounds to the car. *U. S. v. R. F. & P. R. R. Co.* 702 (703).

LOCAL RATES.

Distinguished from reshipping rates. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (378).

Absorbed in ocean-and-rail rate. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (489).

Applicable as proportions of through rate. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600.

LOCAL TRAFFIC.

Can not be compelled to bear an undue burden of the expense of constructing or maintenance of an expensive piece of road or a bridge or a tunnel. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (569).

LOCATION. *See also* ADVANTAGES AND DISADVANTAGES.

Natural location of place enjoying lower rates urged as defense to rates attacked as unduly prejudicial. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (134).

Considered in determining rate adjustment. *Commercial Club of Terre Haute v. V. R. R. Co.* 333 (389).

Commission does not attempt to equalize natural advantages. *Kansas-California Flour Rates*, 459 (462-463).

Port Huron has no advantage over Chicago Junction, and therefore no advantage by reason of its position on the lakes. *Swift & Co. v. P. R. R. Co.* 464 (467).

Geographical location of city, mentioned in determining relative reasonableness of rates. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (480).

Advantage of, urged as justification for lower rates. *Id.* 476 (493).

Geographical location, mentioned in determining relation of rates. *Id.* 476 (494).

Contention made that group rate deprives city of advantages of its location.

Complaint dismissed. *Pardoe Works v. C. R. R. Co. of N. J.* 500 (501).

Geographical location considered in fixing rate adjustment. Rates to North Carolina Points, 550 (552).

Virginia cities entitled to advantages of their location on strong lines and high traffic density. *Id.* 550 (557).

Of Cincinnati justifies a differential against it. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (570).

LONG AND SHORT HAUL.

Carrier with a circuitous route which is meeting rate of short line, held to be justified in charging a higher rate for the shorter than for the longer haul. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (25).

In determining fourth section violations rates of the same character should be compared with one another; proportional rates should not be compared with local rates. Rates on Grain and Grain Products to Texarkana, 35 (36).

Fourth section question not determined. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68).

Rates held to be in violation of section 4; application for relief denied. *Maier & Co. v. S. P. Co.* 103.

Where the short line meets the rate of the long line, this is no justification for the long line to deviate from section 4. *Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co.* 120 (122).

Application to maintain a lower rate on hardwood lumber for export from Rayville, La., to New Orleans, La., than from intermediate points, denied. *Id.* 120 (122).

In proper cases long line is relieved from operation of section 4 as to intermediate points when the rate to the farther-distance point is made to meet the rate of a short-line competitor. *Id.* 120 (122).

Question arising under, not determined. *Pacific Creamery Co. v. S. P. Co.* 405 (410).

Extent of deviation: A fourth-section violation should not extend beyond the real necessities of competitive or other controlling influences. *Emlenton Petroleum Rates*, 519 (521).

Justification for departure: Competition of circuitous line with direct line. *Id.* 519 (521).

LONG AND SHORT HAUL—Continued.

Rates held to be in violation of section 4. *Standard Oil Co. v. P. Co.* 524.

JUSTIFICATION:

While a circuitous line may deviate from section 4 in meeting rate of short-line competitors, the rate from or to the intermediate point must bear a just and reasonable relation to the long-distance-point rate. *Id.* 524 (525).

Carriers with long lines permitted to deviate from section 4 to meet rate of direct route. *Interior Iowa Cities Case*, 536 (538).

Application to deviate from rule of section 4 by the establishment of certain proportional rates, granted. *Rates to North Carolina Points*, 550.

Market competition, as justifying deviation. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (587).

Application for temporary relief until Commission acts upon general applications. *Rates to North Carolina Points*, 550 (556).

Application for relief: to charge proportional class rates from St. Louis to Kansas City, which are lower than rates concurrently in effect on like traffic from St. Louis to Springfield, granted. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600.

Permission granted to continue lower rates from St. Louis, Mo. and East St. Louis, Ill., to Kansas City, Mo., than to Fort Scott, Kansas. *Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co.* 629.

LOSS AND DAMAGE. See RISK; CLAIMS.**LOW RATES.**

Contention made that existing rates are abnormally low. *Lumber Rates from the Southwest to Points North*, 1 (4).

It is unlawful to charge a rate so low as to be noncompensatory or impose a burden upon other traffic. *Id.* 1 (15).

Low grade commodities said to be entitled to. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (24).

Policy of carriers to maintain, in undeveloped sections of country. *Emigrant Movables to South Dakota*, 40 (42).

Abnormally low rate on flaxseed as compared with wheat and coarse grain. *Rates on Flaxseed from Minneapolis to Fredonia*, 633 (636).

Contention made that rate is abnormally low, not sustained. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (675).

Alleged to have been given on a certain article in order that the traffic might move. *U. S. v. R. F. & P. R. R. Co.* 702 (704).

MAIN-LINE RATES.

Maintenance of main-line or district rates on bituminous coal from points on one short line while denying such rates to points located on another short line, held to constitute undue prejudice. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (689).

MAIN LINES.

Cost of operating main lines and branch lines, considered. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

MAINTENANCE EXPENSES.

Increase in. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

MANDAMUS.

To enforce Commission's orders. *St. Paul and Puget Sound Accounts*, 508 (509).

MAPS.

Industrial Railways Case, 212; *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (601); *Paducah Board of Trade v. I. C. R. R. Co.* 593 (594).

LOCAL TRAFFIC.

Can not be compelled to bear an
or maintenance of an expensive
Lumber Co. v. L. & N. R. R. Co.

LOCATION. *See also ADVANTAGES.*

Natural location of place enjoying
as unduly prejudicial. Oklahoma
(134).

Considered in determining rate
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Commission does not attempt to
Flour Rates, 459 (462-463).

Port Huron has no advantage
by reason of its position on

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Advantage of, urged as justification
Geographical location, mention

Contention made that group
Complaint dismissed. Part

Geographical location consid
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Virginia cities entitled to ad
traffic density. Id. 550 (55)

Of Cincinnati justifies a differ
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Justification for departu
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I. & St. L. Ry. 476 (483).

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for relief denied.

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the flour shall be marketed.

Id. 424 (426).

Lumber Rates from Oregon and

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& Co. of N. J. 500 (502); Paducah Board of

Rates, 420 (421).

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Rates from Stations in Missouri, 562 (564).

Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (676).

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Edward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co. 664 (666);

et & Tube Co. v. P. & L. E. R. R. Co. 428 (431).

conditions. Commercial Club of Terre Haute v. V. R. R. Co.

ic Creamery Co. v. S. P. Co. 405 (409); Youngstown Sheet &

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Rates on Green Fruit from Idaho, etc., 650 (651); Hughes Creek
& M. Ry. Co. 671 (677).

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economic conditions. Pardee Works v. C. R. R. Co. of N. J.

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truction. Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

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dling particular commodity. Youngstown Sheet & Tube Co. v. P. &
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s Case, 536 (537); Rates to North Carolina Points, 550 (556-557); Paducah

nd of Trade v. I. C. R. R. Co. 583 (586).

MARINE INSURANCE.

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MARKET COMPETITION. *See also* LONG AND SHORT HAUL.

Urged as justifying deviation from section 4. Application for relief denied. *Maier & Co. v. S. P. Co.* 103 (104).

Urged in defense of rates attacked as unduly prejudicial. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (134).

Cause of fluctuation of rates. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (481).

Considered in determining relation of rates. *Id.* 476 (493).

Urged as reason for absorption of bridge toll. *Norman Lumber Co. v. L. & N. R. R. Co.* 585 (572).

Loses its force in consideration of other circumstances shown. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (585).

As justifying lower rate at farther-distance point. *Id.* 583 (587).

MARKETS.

Carriers may not by any arbitrary or unreasonable adjustment of rates dictate or determine where wheat shall be milled or where the flour shall be marketed. *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424 (426).

Right of carrier to limit markets, discussed. *Lumber Rates from Oregon and Washington*, 609 (614).

A carrier is not justified in attempting to restrict traffic to movement between points on its own line. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (677).

MARKING PACKAGE.

Damages resulting from in transportation to wrong destination held to be due to shipper's improper marking of package. *Brackett Co. v. G. N. Express Co.* 667 (668).

MATERIALS AND SUPPLIES.

Increase in cost of, considered in determining reasonableness of rate. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (485).

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Advantages and disadvantages. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (494).

Agreement. *Straw Rates from Stations in Missouri*, 562 (563).

Averages. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

Average distance. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (130); *Pacific Creamery Co. v. S. P. Co.* 405 (410); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (430); *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (454); *Mississippi River Case*, 530 (533).

Average haul. *Straw Rates from Stations in Missouri*, 562 (564); *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

Average loading. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Average rate. *Pacific Creamery Co. v. S. P. Co.* 405 (409).

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Average ton per mile revenue. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (486); *Pardee Works v. C. R. R. Co. of N. J.* 500 (502); *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591).

Average train-mile earnings. *Duluth Log Rates*, 420 (421).

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Average weight. Straw Rates from Stations in Missouri, 562 (564).

Averaging revenue. Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (676).

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Car earnings. Lumber Rates from the Southwest to Points North, 1 (13); Rock Springs Distilling Co. v. I. C. R. R. Co. 18 (22); Emigrant Movables to South Dakota, 40 (41); Pacific Creamery Co. v. S. P. Co. 405 (406); Straw Rates from Stations in Missouri, 562 (564); Lumber Rates from Local Points to Chattanooga, 646 (648).

Car-mile earnings. Duluth Log Rates, 420 (421); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (433).

Cargo rate. *Id.* 428 (431).

Carload lots. Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co. 664 (666); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (431).

Circumstances and conditions. Commercial Club of Terre Haute v. V. R. R. Co. 383 (389); Pacific Creamery Co. v. S. P. Co. 405 (409); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (433); Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (478, 487, 493); Springfield Traffic Bureau v. St. L. & S. F. R. R. Co. 600 (604); Rates on Green Fruit from Idaho, etc., 650 (651); Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (677).

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Comparison with rate on other articles. Rock Springs Distilling Co. v. I. C. R. R. Co. 18 (24).

Comparative rates. Duluth Log Rates, 420 (422); U. S. v. R. F. & P. R. R. Co. 702 (703).

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Competitive rate. Springfield Traffic Bureau v. St. L. & S. F. R. R. Co. 600 (606).

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Cost figures. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432, 436).

Cost of construction. Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

Cost of equipment. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (485).

Cost of handling particular commodity. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (434).

Cost of improvements. *Id.* 428 (432, 436).

Cost of service. Commercial Club of Terre Haute v. V. R. R. Co. 383 (389); Pacific Creamery Co. v. S. P. Co. 405 (407); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432, 436); Crowds Bros. v. A. T. & S. F. Ry. Co. 449 (454); Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (480); Norman Lumber Co. v. L. & N. R. R. Co. 585 (570); Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co. 629 (632); Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

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MEASURE OF RATES—Continued.

ELEMENTS CONSIDERED—Continued.

Distance. Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co. 129 (130, 134); Duluth Log Rates, 420 (422); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (429); Crowds Bros. v. A. T. & S. F. Ry. Co. 449 (454); Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (481, 487); Mississippi River Case, 530 (533); Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co. 544 (545); Norman Lumber Co. v. L. & N. R. R. Co. 565 (574); Springfield Traffic Bureau v. St. L. & S. F. R. R. Co. 600 (602); Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co. 629 (630); Rates on Flaxseed from Minneapolis to Fredonia, 633 (636); Boxboard Rates from Wilmington, 694 (695); Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

Economies, cost of. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432).

Equalizing rates. Fabrication-in-transit Charges, 70 (77).

Equipment, cost of. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432, 436).

Estoppel. Rates on crushed stone, 136 (137); Duluth Log Rates, 420 (421).

Expedited service. Kansas-California Flour Rates, 459 (462).

Expense of operating steamer. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (490).

Financial condition of carrier. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (20, 27); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (434).

Grade reducing. *Id.* 428 (432, 436).

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Improvements. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (432, 436).

Industrial rate. Lumber Rates from Southwest to Points North, 1 (15); Fabrication-in-transit Charges, 70 (77); Duluth Log Rates, 420 (421); Lumber Rates from Local Points to Chattanooga, 646 (647).

Investment. Lumber Rates from Southwest to Points North, 1 (15); Santa Rosa Traffic Asso. v. S. P. Co. 65 (66); Fabrication-in-transit Charges, 70 (77); Lumber Rates from Local Points to Chattanooga, 646 (647).

Line haul. Interior Iowa Cities Case, 536 (537); Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

Line haul: one and two line hauls. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (21, 27).

Loading. Duluth Log Rates, 420 (422); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (431); Kansas-California Flour Rates, 459 (461).

Location. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (494); Rates to North Carolina Points, 550 (552, 557).

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Movement of traffic, augmentation of. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (437).

Natural advantages. Kansas-California Flour Rates, 459 (462-463).

Operating conditions. Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co. 544 (545).

Past rate. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (24); Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (431, 435); Lumber Rates from Local Points to Chattanooga, 646.

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MEASURE OF RATES—Continued.

ELEMENTS CONSIDERED—Continued.

Potential competition. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68); *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (134); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (493).

Presumption of reasonableness. *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Prosperity of shipper. *Id.* 428 (437).

Public interest. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (380); *Marble Rates from Vermont Points*, 607 (608).

Railroad competition. *Emlenton Petroleum Rates*, 519 (521); *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (577).

Relative rates. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (23); *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (131); *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424; *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433, 436); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476; *Mississippi River Case*, 530 (533); *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (578); *Rates on Potash and Other Commodities*, 626 (627); *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (631); *Rates on Flaxseed from Minneapolis to Fredonia*, 633 (637); *Refrigeration Charges on Fruits and Vegetables*, 653 (658); *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (676, 681); *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (687); *Stone & Son v. S. Ry. Co.* 699 (701); *U. S. v. R. F. & P. R. R. Co.* 702 (703).

Revenue: averaging. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (676).

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Short-line distance. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (130).

Sparsity of traffic. *Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co.* 62 (64).

Special import rate. *Rates on Potash and Other Commodities*, 626 (627-628).

Switching movement. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (676).

Terminal expense. *Id.* 671 (678).

Tonnage. *Lumber Rates from the Southwest to Points North*, 1 (8); *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431, 437); *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664 (665).

Ton per mile earnings. *Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co.* 120 (121).

Ton per mile revenue. *Lumber Rates from the Southwest to Points North*, 1 (9); *Rock Springs Distilling Co. v. I. C. R. R. Co.* 18 (24); *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (130); *Pacific Creamery Co. v. S. P. Co.* 446 (446); *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (428, 436); *Crowder Bros. v. A. T. & S. F. Ry. Co.* 449 (452); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (486); *Pardee Works v. C. B. R. Co. of N. J.* 569 (562); *Interior Iowa Cities Case*, 536 (537); *Colorado Min. Ass. v. A. T. & S. F. Ry. Co.* 544 (545); *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (577); *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591); *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (632); *Rates on Flaxseed from Minneapolis to Fredonia*, 633 (636).

Transit. *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433); *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664 (665).

Train-mile earnings. *Duluth Log Rates*, 426 (421); *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433).

MEASURE OF RATES—Continued.**ELEMENTS CONSIDERED—Continued.**

Transfer service. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

Transportation conditions. *Maier & Co. v. S. P. Co.* 103 (105); *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (389); *Pacific Creamery Co. v. S. P. Co.* 405 (407); *Duluth Log Rates*, 420 (422); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433); *Botsford & Barrett v. P. R. R. Co.* 469 (472); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (484, 487) *Interior Iowa Cities Case*, 536 (537); *Colorado Mfrs. Assn. v. A. T. & S. F. Ry. Co.* 544 (545).

Trunk-line conditions. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (484).

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Volume of traffic. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (389); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431); *Kansas-California Flour Rates*, 459 (461); *Paducah Board of Trade v. I. C. R. R. Co.* 593 (598); *U. S. v. R. F. & P. R. R. Co.* 702 (703).

Water competition. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68); *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (133); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (484, 490, 493); *Paducah Board of Trade v. I. C. R. R. Co.* 583 (589).

Weight. *Straw Rates from Stations in Missouri*, 562 (564).

Weighted average distance. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (430).

Weighted averages. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

Wholesale rates. *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664 (665-666).

Yard movement, cost of. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432).

"MEETING THE COMPETITION."

Implication that means the destruction of lake traffic. *Lake-and-rail Butter and Egg Rates*, 45 (50).

METROPOLITAN DISTRICT.

Includes New York City and territory in New Jersey adjacent thereto. *Pardee Works v. C. R. R. Co. of N. J.* 500 (501).

MILEAGE. See also CONSTRUCTIVE MILEAGE.

Relative mileage, Cincinnati to Atlanta and Birmingham. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (479).

Primary basis of all the L. & N. rates. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (578).

MILEAGE RATES.

Not found unjustly discriminatory. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28 (31).

Making rates on an arbitrary mileage system may finally be reached, but the industries and commerce of the country are now established on a different basis; and the Commission at this time declines to undertake such a revolution. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (379, 380).

On logs. *Duluth Log Rates*, 420 (422).

Rates to Atlanta and Chattanooga compared on mileage basis. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (486).

Rates based on mileage scale. *Interior Iowa Cities Case*, 536 (537).

Rate for haul of 50 miles and for each additional 25 miles. *Straw Rates from Stations in Missouri*, 562 (563).

MILEAGE RATES—Continued.

As fixed by R. R. and Warehouse Comm. of Missouri. Springfield Traffic Bureau *v. St. L. & S. F. R. R. Co.* 600 (602).

Special commodity canceled and interstate mileage scale provided for. Rates on Lumber from Local Points to Chattanooga, 646.

MILEAGE TICKET.

Refund for unused portion. *Miller v. A. C. L. R. R. Co.* 526 (529).

MILLING IN TRANSIT. See TRANSIT PRIVILEGES.**MINIMUM RATES.**

It is unlawful to charge a rate so low as to be noncompensatory or impose a burden upon other traffic. Lumber Rates from the Southwest to Points North, 1 (15).

MINIMUM WEIGHT.

Provision for minimum weights for different sizes of cars preferable over flat per-car rates. Rock Spring Distilling Co. *v. I. C. R. R. Co.* 18 (27).

And maximum rate fixed by Commission. *Maier & Co. v. S. P. Co.* 103 (105).

A carload minimum weight which is reasonably adapted to the needs of carriers and great majority of shippers will not be increased because one shipper is able to load more heavily than his competitors; neither will Commission in such case prescribe a lower rate per 100 pounds conditional upon use of a higher minimum weight as measure of carload. Rates on Excelsior and Flax Tow, 640.

MISLAID TICKET.

Redemption. *Miller v. A. C. L. R. R. Co.* 526.

MISROUTING. See also ROUTING.

Carrier not liable where error resulted from fault of shipper in marking package. *Brackett Co. v. G. N. Express Co.* 667 (668).

MIXING PRIVILEGE.

In connection with export rates. *Erickson Co. v. C. M. & St. P. Ry. Co.* 414 (415).

MIXED SHIPMENTS.

Carrier may require shippers to partition cars for mixed shipments of live stock. *Lee v. St. L. S. W. Ry. Co.* 101 (102).

Rule applying highest rate and highest minimum on mixed shipment of live stock, neither approved nor disapproved. *Id.* 101 (102).

Rate held unreasonable on mixed shipment of live stock for which no tariff rate was provided. *Id.* 101 (102, 103).

Proposed tariffs which forbid mixed carload shipments of gasoline engines and windmills, not found unreasonable. Rates on Gasoline Engines and Windmills, 643.

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Of grain. *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424 (425).

MONOPOLY.

Right of carrier to create monopoly on behalf of shippers located on its line, discussed. Lumber Rates from Oregon and Washington, 609 (614).

Evils flowing from elimination of competitive routes, discussed. Rates on Green Fruit from Idaho, etc., 650 (651).

MOTOR HAUL.

Coal from mines to main line. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (687).

MOVEMENT OF TRAFFIC.

Augmentation of, referred to in determining reasonableness of rate. *Youngtown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

Testimony to effect that no traffic moved under certain rates. Refrigeration Charges on Fruits and Vegetables, 653.

NAME.

Unlawful to disclose name of consignee. *In re Freight Bills*, 496 (498).

Disclosing to consignee name of original consignor, lawfulness of. *Id.* 496 (498).

NARROW-GAUGE LINE.

Complaint seeking order requiring narrow-gauge line to restore part of its tracks it had destroyed, dismissed for want of jurisdiction. *Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co.* 62.

NARROW-GAUGE TRACKS.

From mines to main line. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (687).

NATIONAL CAR DEMURRAGE RULES.

Rule 8, sec. B-2. *American Hay Co. v. C. V. Ry. Co.* 659 (662).

NATIONAL INDUSTRIAL TRAFFIC LEAGUE.

Represented shippers in effort to secure uniform freight receipt. *In re Freight Bills*, 496 (497).

NATURAL ADVANTAGES. See ADVANTAGES AND DISADVANTAGES.**NATURAL GATEWAY.**

Cincinnati is, on traffic moving to Atlanta. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (481).

NATURAL ROUTES.

Route held not to be natural. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591).

Unnatural route, through routes and joint rates via. *Lumber Rates from Oregon and Washington*, 609 (612).

NAVIGABILITY.

Of Arkansas river not determined. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (134).

NET INCOME.

Of road decreased as result of increase in expenses. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

NONCOMPETITIVE TERRITORY.

Rates extended to in violation of section 4. *Emlenton Petroleum Rates*, 519 (520).

NOTICE.

Tariff effective on five days' notice. *Mississippi River Case*, 530 (535); *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 539 (543).

NOTICE OF ARRIVAL.

Freight bill as. *In re Freight Bills*, 496.

For purposes of demurrage. *American Hay Co. v. C. V. Ry. Co.* 659 (663).

NUMBER OF CAR.

Should be specified in freight bill. *In re Freight Bills*, 496 (497).

OCEAN-AND-RAIL RATES.

Constructive distance, Baltimore to Atlanta, 510 miles. *Atlanta Freight Bureau v. N. C. & St. L. Ry. Co.* 476 (488).

Application of inter-river scale from Atlantic seaboard. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (602).

OFFICIAL CLASSIFICATION.

Governs traffic from the east to Nashville and Memphis. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (488).

Territory rates compared with rates in southern and western classification territories. *U. S. v. R. F. & P. R. R. Co.* 702 (703).

OPERATING CONDITIONS.

Considered in determining reasonableness of rate. *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 544 (545).

OPERATING EXPENSES.

Greatly increased by industrial road allowances and free services. *Industrial Railways Case*, 212 (217).

Referred to in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432).

Rate remaining unchanged for ten years has lost its earning power; expenses having increased, and net income decreased. *Id.* 428 (437).

ORDER.

Prior order modified. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18.

None entered, carriers being given opportunity to comply with Commission's decision. *New York Hay Exchange Asso. v. L. V. R. R. Co.* 90 (93); *Schenck v. N. & W. Ry. Co.* 125; *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (135); *Paducah Board of Trade v. I. C. R. R. Co.* 583 (592); *Same v. Same* 593 (599).

None necessary. *Weisse & Co. v. C. H. & D. Ry. Co.* 374 (375); *American Hay Co. v. C. V. Ry. Co.* 659 (663).

ORIGIN.

Of shipment should be specified in freight bill. *In re Freight Bills*, 496 (497).

No valid reason shown for maintaining different rates from Minneapolis on flaxseed coming from points beyond than from Minneapolis proper. Rates on Flaxseed from Minneapolis to Fredonia, 633.

OUTBOUND BILLING.

Discussed. *Fabrication-in-transit Charges*, 70.

OUT OF LINE.

Differentials. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (578).

OVERCHARGES.

Collection of charges on cars not subject to demurrage, held to be an overcharge and may be refunded without order of Commission. *New York Hay Exchange Asso. v. L. V. R. R. Co.* 90 (92, 93).

Overcharge admitted by defendant carrier. *Norcross Bros. v. L. & N. R. R. Co.* 109 (112).

OWNER'S RISK.

Mixed shipments of live stock. *Lee v. St. L. S. W. Ry. Co.* 101.

OWNERSHIP.

Of bridge does not render carriers using it any the less liable to contribute to its maintenance in proportion to the use made of it. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (570).

Of a railroad by the principal shipper on its line is not prohibited by the act. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (692).

PAPER RATES.

Rates under consideration are to a large extent paper rates. Rates on Flaxseed from Minneapolis to Fredonia, 633 (634).

Should be scaled in same manner as other rates when it ceases to be. Rates on Potash and Other Commodities, 626 (623).

Testimony to effect that no traffic moved under certain rates. Refrigeration charges on Fruits and Vegetables, 653.

PARITY OF RATES.

Changes in rates should be made having in mind the necessity for. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (487).

PARTIES.**ENTITLED TO DAMAGES:**

Parties entitled to damages not parties to case; held that refund can be made to them without order, the exaction of demurrage charges being unlawful and constituting an overcharge. *New York Hay Exchange Asso. v. L. V. R. R. Co.* 90 (92, 93).

PARTIES—Continued.**ENTITLED TO DAMAGES—Continued.**

Commission merchants who paid demurrage but charged same back on shippers held not entitled to reparation on account of unlawful exaction of demurrage. *Id.* 90 (92).

Entitled to damages: complainant who purchased business held entitled to reparation on shipments moving prior to date of purchase. *Stone & Son v. S. Ry. Co.* 699 (701).

Voluntary associations on behalf of members. *International Agricultural Corporation v. L. & N. R. R. Co.* 391 (394).

COMPLAINANTS:

Railroad company. *B. R. & P. Ry. Co. v. P. Co.* 114.

State Commission. *R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co.* 396.

DEFENDANTS:

No order entered against carriers not made parties defendant. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (19).

Liable for damages: Commission awards damages for a gross sum against all participating carriers without proportioning the payments to be made by each. The Commission, however, indicates the proper proportions and will consider the matter later if the carriers are unable to agree. *International Agricultural Corporation v. L. & N. R. R. Co.* 391 (392).

Responsible for preference or prejudice: contention made that undue discrimination by one carrier cannot be predicated upon the rate adjustment of another carrier. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (576); *Rates on Gasoline Engines and Windmills*, 643 (645).

Several necessary parties omitted. *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (631).

PARTITION.

In cars for mixed shipments of live stock. *Lee v. St. L. S. W. Ry. Co.* 101 (102).

PASSENGER TICKETS. See TICKETS.**PASSES.**

Certain practices of Montana carriers respecting free passes criticized and conditions in Illinois commented upon. *Montana Pass Situation*, 411.

PAST RATES.

Presumption of reasonableness from long maintenance of voluntary rate. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (24).

A long maintained rate is presumptively reasonable. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Long maintenance of rate, commented upon in dismissing case attacking such rate as unreasonable. *Id.* 428 (435).

Long maintenance of rate urged as reason why it should not be increased. *Lumber Rates from Local Points to Chattanooga*, 646.

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Freight Bill as evidence of. *In re Freight Bills*, 496.

PENALTIES.

For violation of rules of Commission. *St. Paul and Puget Sound Accounts*, 508.

PER CAR COST.

To ascertain of manufactured product charges on the excess weight of the rough material must be added. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52 (58).

PER DIEM.

Allowance to industrial roads performing a plant facility or shipper's service, held to be unlawful. *Industrial Railways Case*, 212.

Reclaim to industrial roads. None paid by line owning mine. *Id.* 212 (213, 231).

PERCENTAGE RATES.

- Rates not scaled on percentage basis. *Swift & Co. v. P. R. R. Co.* 464 (465).
 Rates on oil in c. f. a. territory are usually made on basis of 90 per cent of fifth class rate. *Emlenton Petroleum Rates*, 519 (520).
 Central freight association points to Mississippi River crossings. *Mississippi River Case*, 530 (532).
 As proposed by carriers would result in an increase and not in accordance with finding in former report. *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 539 (540).
 Rate from Louisville to New York fixed by the percentage scale applying between c. f. a. and trunk line territories. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (576).
 Deprivation of city of rates on percentage principle, held not to be justified. Rates on Potash and Other Commodities, 626 (627).
 Principle of rates between east and c. f. a. territory has been uniformly approved. *Id.* 626 (628).

PICK UP AND DELIVERY SERVICE.

- Discussed. *Industrial Railways Case*, 212 (235).

PITTSBURGH BASE PRICE.

- On iron and steel articles, defined. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129.

PLANT FACILITIES. See also INDUSTRIAL ROADS.

- Performance by line carrier of plant industry service held to constitute illegal rebate. *Industrial Railways Case*, 212 (237).

PLANT RAILWAYS. See INDUSTRIAL ROADS.**POLICING TRANSIT PRIVILEGES.**

- Duty of shippers to aid carriers. *Gadow v. C. St. P. M. & O. Ry. Co.* 457 (458).

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- As to absorbing bridge tolls. *Norman Lumber Co. v. L. & N. R. R. Co.* 565; *Paducah Board of Trade v. I. C. R. R. Co.* 593 (596).
 As to maintaining rates to points off line. *Lumber Rates from Oregon and Washington*, 609 (614).
 As to permitting cars going off line. *C. & N. W. Ry. Reconsignment Rules*, 620.
 Not to extend main-line rates to independent short lines controlled by industries thereon. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (689).
 Not to pro rate and divide its through rates on coal with any other independent road. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (676).

POOLING.

- Arrangements between trunk lines performing industrial service. *Industrial Railways Case*, 212 (231).

POPULATION.

- Small population urged as an element for consideration in determining reasonableness of rates. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (21).
 Atlanta excels Birmingham. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (480).

PORT COMBINATIONS.

- Ocean-and-rail rates to Atlanta. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (491).

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- Ocean-and-rail rates from New York, Philadelphia and Baltimore. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (493).

POSTING.

- Notice of embargo. *New York Hay Exchange Asso. v. L. V. R. R. Co.* 90 (93).

POTENTIAL COMPETITION.

Held not sufficient in degree to be a factor in establishment of water competitive rates. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68).

Urged as defence to rates attacked as unduly prejudicial. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (134).

From the east to Nashville via Ohio and Cumberland rivers. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (493).

POTENTIAL TONNAGE.

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PRECEDENTS. See also RES ADJUDICATA.

Former decision adhered to. *Rock Springs Distilling Co. v. I. C. R. R. Co.* 18.

Decision herein controlled by decision in another case. *Swift & Co. v. P. R. R. Co.* 464 (469).

Doctrine of former decision adhered to. *Lumber Rates from Oregon and Washington*, 609 (618).

PREFERENCES AND PREJUDICES.**IN GENERAL:**

Lack of strict uniformity of treatment does not necessarily result in undue prejudice. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52 (60).

Intermediate location and higher rates, as compared with another point, does not of itself show a violation of section 3. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68).

Undue preferences ought to be eliminated before roads are permitted to make general rate increase. *Industrial Railways Case*, 212 (218).

Agreement between carriers and shippers, no justification for unduly prejudicial rates. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (132).

What constitutes undue prejudice: No undue prejudice can be predicated upon the application of main-line rates to points on branches of the *Kanawha & Michigan Railroad* while denying such rates to complainant on another road. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682.

ARTICLES:

Refusal to transport certain traffic held unduly prejudicial. *Lake-and-rail But-ter and Egg Rates*, 45 (51).

Failure to absorb switching charges on grain not found to have resulted in undue prejudice. *Chicago Board of Trade v. A. T. & S. F. Ry. Co.* 438.

A competitive relation must generally exist between commodities, before there can be an undue prejudice between them. *Id.* 438 (443).

Rates not found unduly prejudicial. *U. S. v. R. F. & P. R. R. Co.* 702.

Elimination of demurrage charges as a transportation charge against industries, gives the industries so favored an undue and unreasonable preference and advantage. *Industrial Railways Case*, 212 (237).

DEFENSES:

Carrier responsible for: Contention made that undue discrimination by one carrier can not be predicated upon the rate adjustment of another carrier. *Norman Lumber Co. v. I. & N. R. R. Co.* 565 (576).

Contention made that section 15, on the matter of allowing a road the entire length of its haul in the establishment of through routes, can not be invoked as a defense to a discrimination. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (679).

It is no defense to a charge of unjust discrimination that a short-line is violating the commodities clause. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (693).

PREFERENCES AND PREJUDICES—Continued.

ORDER:

Contention that alternative provisions of Commission's order are impracticable of fulfillment, not sustained. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (69).

Not to be understood as meaning that rates to favored point should be advanced. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (135).

PARTIES RESPONSIBLE:

Fact that defendants have established through routes and joint rates from C. & O. mines to K. & M. destinations while refusing complainant such routes and rates held not to constitute unlawful discrimination under the principle that the test of discrimination is the ability of one of the carriers participating in the two through routes to put an end to the discrimination by its own act. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (680).

Carriers to California terminals can not be held responsible for any discrimination resulting by reason of lower rates in effect via the lines to the north coast. *Rates on Gasoline Engines and Windmills*, 643 (645).

Payment of allowances to industrial roads performing an industrial service held to constitute an undue and unreasonable preference and advantage. *Industrial Railways Case*, 212 (237).

Performance of industrial service for industries by line carriers held to constitute an undue and unreasonable preference and advantage. *Id.* 212 (237).

PERSONS:

Payment of allowances for services of some industrial roads while denying such allowances to other plants, held to constitute discrimination. *Id.* 212 (213, 230).

Failure to absorb switching charges not found to have resulted in undue prejudice. *Chicago Board of Trade v. A. T. & S. F. Ry. Co.* 438.

To be undue, the discrimination must ordinarily be such that the prejudice arising out of it against one party is a source of advantage to the other alleged to be favored. *Id.* 438 (443).

Charging higher storage charges at Camden, N. J., than at Philadelphia, Pa., held not unduly discriminatory to complainant as he has benefit of storage at Philadelphia. *Parry & Co. v. P. R. R. Co.* 559 (561).

REMOVAL OF PREJUDICE:

Should be accomplished by granting free switching at point discriminated against rather than by making a charge for such service at the favored points. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52 (61).

LOCALITIES:

Cancellation of three-line haul route held not to result in undue prejudice. *Lumber rates through Ohio River Crossings*, 38.

Failure to absorb switching charges not found to have resulted in undue prejudice. *Chicago Board of Trade v. A. T. & S. F. Ry. Co.* 438.

Result from absorption of bridge tolls at cities on one side of river and failure so to do at cities on opposite side of river. *Norman Lumber Co. v. L. & N. R. R. Co.* 565.

Rates not found unjustly discriminatory. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28.

Rates held not to be unduly prejudicial. *Wichita Board of Trade v. A. & S. Ry. Co.* 376; *Commercial Club of Terre Haute v. V. R. R. Co.* 383; *Erickson Co. v. C. M. & St. P. Ry. Co.* 414; *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428; *Pardee Works v. C. R. R. Co. of N. J.* 500; *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600; *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629.

PREFERENCES AND PREJUDICES—Continued.**LOCALITIES—Continued.**

Rates held unduly prejudicial. *Emigrant Movables to South Dakota*, 40 (42); *Adams & Sons v. V. S. & P. Ry. Co.* 52 (61); *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (69); *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129; *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424; *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449; *Paducah Board of Trade v. I. C. R. R. Co.* 583. *Same v. Same* 593 (599).

Switching charges held unduly prejudicial. *Botsford & Barrett v. P. R. R. Co.* 469 (472).

Some rates held unduly prejudicial; others held not. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476.

PRESUMPTION.

Of reasonableness of rate voluntarily maintained for a long time. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (24).

Nothing in the act warrants a presumption that a complainant has been damaged by some violation of the act. *New Orleans Board of Trade v. I. C. R. R. Co.* 32 (33).

A rate long maintained is presumptively reasonable. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

PRIMA FACIE.

Evidence of payment and delivery of property, freight bill as. *In re Freight Bills*, 496.

PRIVATE-LINE CARS.

Necessary to handle traffic to points off line. *C. & N. W. Ry. Reconignment Rules*, 620 (621).

PRIVATE SCALES.

Weight ascertained by, discussed. *Schenck v. N. & W. Ry. Co.* 125 (127).

PRIVATE SIDING.

What constitutes delivery on. *Industrial Railways Case*, 212 (225).

PRODUCTS.

Transit privilege on product that is essentially different from raw material. *Fabrication-in-transit Charges*, 70 (76).

PROFIT.

In connection with industrial switching. *Fabrication-in-transit Charges*, 70 (78).
Unfair to deprive carrier of profits resulting from improvements of plant and adoption of modern methods. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (436).

Lack of prosperity and because cost of assembling raw material is greater than competitors no justification for establishment of lower rates. *Pardee Works v. C. R. R. Co. of N. J.* 500 (502).

Contention of carriers that they are entitled to a reasonable profit on refrigeration service. *Refrigeration Charges on Fruits and Vegetables*, 653 (657).

Coal is sold on a close margin of profit. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (672).

PROHIBITED LIST. See also TRANSPORTATION.

Explained. *Lake-and-rail Butter and Egg Rates*, 45.

PROHIBITIVE RATES. See LOW RATES.**PROPORTIONAL RATES.**

On wheat from Kansas City, Mo., to Memphis, Tenn., does not unjustly discriminate against the territory in question. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28.

PROPORTIONAL RATES—Continued.

Is in essence a division of a through rate. *Id.* 28 (29).

The maintenance of a lower rate from a farther-distance point does not of necessity subject the intermediate point taking a higher rate to an unjust discrimination. *Id.* 28 (29).

From southern Illinois and southeastern Missouri, carriers not permitted to cancel. Rates on Grain and Grain Products to Texarkana, 35.

Should not be compared with local rates in determining a violation of section 4. *Id.* 35 (36).

Forming a part of combination through rate. Lake-and-rail Butter and Egg Rates, 45 (48).

In connection with transit privilege. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52 (57).

From Terre Haute, Ind. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (385).

On grain. *Board of Trade of Chicago v. A. T. & S. F. Ry. Co.* 438 (441).

From Chicago, etc., to Ohio River crossings governed by southern classification for traffic destined beyond. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (480).

On tomatoes from Jacksonville: advance not justified. Rates on Tomatoes from Jacksonville, 522.

On traffic west of the Mississippi River moving between interior Iowa cities and points east of the Indiana-Illinois state line, approved. *Interior Iowa Cities Case*, 536.

Compared with sum of locals. *Id.* 536 (537).

Proposed rates from Memphis should be established as proportional rates only, applicable on business originating in territory west of the Mississippi River, and so limited in their application as to prevent increase of discrimination against intermediate points of origin. Rates to North Carolina Points, 550.

That are local rates in substance and effect. *Id.* 550 (551).

Cancellation of joint proportional rate, leaving in effect higher specific commodity rates, held to be justified. *Straw Rates from Stations in Missouri*, 562.

Cancelled and local rates established. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (576).

On classes from St. Louis, Mo., to Springfield, Mo., not found unreasonable or unjustly discriminatory. *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600.

No good reason shown for maintaining different rates from Minneapolis on flaxseed coming from points beyond than from Minneapolis proper. Rates on Flaxseed from Minneapolis to Fredonia, 633.

Advance in, permitted in part and condemned in part. *Id.* 633.

PRORATING.

Policy of road not to prorate through rates on coal with any other independent road. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (676).

PRORATING DISTANCE.

From north Atlantic to southern points. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (490, 494).

PROSPERITY OF SHIPPER.

Commented upon in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

PROTECTION AGAINST WEATHER.

Protection of Potato Shipments in Winter, 504.

PUBLIC INTEREST.

Is advanced by the reasonable success of railroad investments under rate schedules reasonable to shippers. *Industrial Railways Case*, 212 (218).

In payment of allowances to industrial roads. *Id.* 212 (214).

Considered in determining rate question. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (380).

In accurate reports from carriers. *St. Paul & Puget Sound Accounts*, 508 (517).

Considered in matter of establishing or cancelling through route. *Marble Rates from Vermont Points*, 607 (608).

PUNCH CANCELLATION TICKETS.

Refund for unused portion. *Miller v. A. C. L. R. R. Co.* 526 (529).

RAIL-AND-WATER ROUTES.

Tendency of Nashville merchants to take advantage of. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (493).

RAILROAD COMPETITION.

Cause of fluctuation of rates. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (481).

As justification for deviation from section 4. *Emlenton Petroleum Rates*, 519 (521).

Rates compelled by competition of direct lines are not voluntary rates. *Id.* 519 (521).

Urged as compelling reduction of rates. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (577).

Loses its force in consideration of other circumstances shown. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (585).

Existence of between prairie lines. *Lumber Rates from Oregon and Washington*, 609 (617).

Rates controlled by. *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (631).

Effect of, on icing charges. *Refrigeration Charges on Fruits and Vegetables*, 653 (654).

RAILROADS.

Should not be permitted to render useless navigation improvements on the great lakes. *Lake-and-rail Butter and Egg Rates*, 45 (51).

"RATE."

Defined. *Industrial Railways Case*, 212 (235).

Held not to be compensatory to carriers when carriers perform under it a plant facility service. *Id.* 212 (237).

To be charged should be specified in freight bill. *In re Freight Bills*, 496 (497).

RATE-BREAKING. See BREAKING RATES.**RATE-MAKING DISTANCE.**

Water mileage against rail. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (490).

"REAL RAILROADS."

Contention that plant railways are not. *Industrial Railways Case*, 212 (236).

REASONABLE RATES.

A rate must be reasonable for the service rendered. It must not be unreasonably high or so low as to be noncompensatory or impose a burden upon other traffic. *Lumber Rates from the Southwest to Points North*, 1 (15).

Rates held unreasonable; reduced rates prescribed. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (681); *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18.

REASONABLE RATES—Continued.

Rates held unreasonable. *Lee v. St. L. S. W. Ry. Co.* 101; *Maier & Co. v. S. P. Co.* 103 (105); *Michigan Seating Co. v. G. T. W. Ry. Co.* 123; *Weisse & Co. v. C. H. & D. Ry. Co.* 374; *International Agricultural Corporation v. L. & N. R. R. Co.* 391; *Pacific Creamery Co. v. S. P. Co.* 405; *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424; *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449; *Kansas-California Flour Rates*, 459; *Swift & Co. v. P. R. R. Co.* 464; *Botsford & Barrett v. P. R. R. Co.* 469; *Green Bros. Box & Lumber Co. v. C. N. W. Ry. Co.* 473; *Lumber Rates from Local Points to Chattanooga*, 646; *Wichita Business Assn. v. K. C. M. & O. Ry. Co.* 669; *Stone & Son v. S. Ry. Co.* 699.

Rates not held unreasonable. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28; *Danciger v. P. C. C. & St. L. Ry. Co.* 99; *Commercial Club of Terre Haute v. V. R. R. Co.* 383; *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428; *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476; *Pardee Works v. C. R. R. Co. of N. J.* 500; *Standard Oil Co. v. P. Co.* 524; *Interior Iowa Cities Case*, 536; *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600; *Fort Scott Industrial Assn. v. St. L. & S. F. R. R. Co.* 629; *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664; *U. S. v. R. F. & P. R. R. Co.* 702.

REBATES.

Allowances to industrial roads referred to as. *Industrial Railways Case*, 212 (216). Ought to be eliminated before roads are permitted to make general rate increase. *Id.* 212 (218).

Allowances to industries for performance of plant facilities service, held to constitute illegal rebates. *Id.* 212 (237).

REBILLING. See TRANSIT PRIVILEGES.**RECEIPT.**

Freight bill as. In re Freight Bills, 496.

RECLAIMS.

Per diem, to industrial roads. *Industrial Railways Case*, 212 (213, 231).

RECONSIGNMENT.

Flour at California terminal without extra charge. *Kansas-California Flour Rates*, 459 (460).

Charge, freight bill should specify. In re Freight Bills, 496 (497).

Allegation that proposed rates will curtail privilege of. *Lumber Rates from Oregon and Washington*, 609 (615).

Carrier's refusal to accept reconsignment orders for foreign-line points on freight loaded in respondent's cars and those of another line, not found to be in violation of the act. *C. & N. W. Ry. Reconsignment Rules*, 620.

Is largely outgrowth of commercial conditions not created by carrier. *Id.* 620 (623).

Commission has not ordered the granting of reconsignment nor its extension except to remove discriminations or where the rules were unreasonable. *Id.* 620 (623).

Shipper has no right to demand any transfer resulting from reconsignment at his request of freight originally consigned to a given destination, shall be performed by the carrier, either at its own expense or otherwise. *Id.* 620 (624).

RECORD.

Freight bill as a. In re Freight Bills, 496 (497).

"RED BALL" SERVICE.

Kansas-California Flour Rates, 459 (462).

REDEMPTION.

Of unused tickets. *Miller v. A. C. L. R. R. Co.* 526.

REDUCTION IN RATES.

Rates established as result of action by state commission, not a voluntary rate.

Atlanta Freight Bureau *v.* N. C. & St. L. Ry. 476 (484).

Made by carrier in classification after complaint filed. *U. S. v. R. F. & P. R. R. Co.* 702 (703).

REFRIGERATION.

Said to be necessary for transportation of dairy products in question. *Lake-and-rail Butter and Egg Rates*, 45 (48).

Volume of traffic considered in determining propriety of compelling water lines to install refrigeration equipment. *Id.* 45 (51).

Water lines required to transport dairy products and furnish reasonable refrigeration facilities therefor. *Id.* 45 (51).

A tariff that offers a protected service, in special equipment for shipments of potatoes in winter at the risk of the carrier for weather damages and at the same time permits the shipper, at a lower rate and at his own risk, to furnish his own protection, not found unlawful or unreasonable. *Protection of Potato Shipments in Winter*, 504.

Tomato shipments. *Rates on Tomatoes from Jacksonville*, 522 (523).

Elimination of refrigeration service known as "shipper's icing" plan, under which shipper is allowed to indicate on bill of lading amount of ice he desires placed in car en route, to be furnished by carrier at \$2.50 per ton, and substituting therefor a refrigeration service at a stated charge of \$40 per car, held to be justified. *Refrigeration Charges on Fruit and Vegetables*, 653.

Items of expense. *Id.* 653 (657).

REFRIGERATOR CARS.

Number owned by C. & N. W. Ry. *C. & N. W. Ry. Reconsignment Rules*, 620.

REFUND.

In connection with transit privilege. *Fabrication-in-transit Charges*, 70 (73);

Concentration of Cotton at Points in Arkansas, 106.

Overcharge. *New York Hay Exchange Asso. v. L. V. R. R. Co.* 90 (93).

Switching charge. *Chicago Board of Trade v. A. T. & S. F. Ry. Co.* 438 (446).

Value of unused ticket. *Miller v. A. C. L. R. R. Co.* 526.

REHANDLING IN TRANSIT.

Lumber at Louisville. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (566).

REHEARING.

Granted. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (19).

Former report affirmed. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (66).

REICING.

Stations, Denver and Pueblo, Colo., and Hoisington, Kans. *Refrigeration Charges on Fruits and Vegetables*, 653 (654).

RELATIVE MILEAGE.

Prayer for Cincinnati-Atlanta rates on parity to Cincinnati-Birmingham based on.

Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (479).

RELATIVE RATES. See also DISTURBANCE OF ADJUSTMENT.

Relative reasonableness of rates offered as justification of proposed increase.

Lumber Rates from the Southwest to Points North, 1 (15).

Rates not found to be relatively unreasonable. *Southwestern Missouri Millers' Club v. St. L. & S. F. R. R. Co.* 28 (30, 31).

Combination and joint rate compared. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (133).

Complaint seeking extension of Chicago basis of rates to Terre Haute, Ind., dismissed. *Commercial Club of Terre Haute v. V. R. R. Co.* 383.

No fixed relation between coal rates from Pittsburgh to the valleys and lake cargo coal. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (436).

RELATIVE RATES—Continued.

Rates from Cincinnati to Atlanta should be on a parity with rates to Birmingham.

Atlanta Freight Bureau *v. N. C. & St. L. Ry.* 476.

Rates between various points adjusted on a relative basis. Mississippi River Case, 530 (533).

Fixed relation between certain rates specified. Rates to North Carolina Points, 550 (552).

Rates in c. f. a. territory are usually lower than in western territory. Straw Rates from Stations in Missouri, 562 (563).

Fixed on lumber from equidistant points to north and south banks of Ohio River crossings. Norman Lumber Co. *v. L. & N. R. R. Co.* 565.

Relation between Ohio River crossings fixed. Paducah Board of Trade *v. I. C. R. R. Co.* 583.

Rates east and west of the Mississippi River compared. *Id.* 583 (586).

Relation of rates between Paducah and Cairo fixed. *Same v. Same*, 593.

Rates on flaxseed from Minneapolis and all other points to consuming markets should bear a consistent relationship to one another. Rates on Flaxseed from Minneapolis to Fredonia, 633.

Refrigeration charges herein compares favorably with similar charges approved by Commission. Refrigeration Charges on Fruits and Vegetables, 653 (658).

In considering what is a reasonable rate for a movement from one coal district, the Commission cannot be expected to take into account the considerations which enter into rates from another district. Hughes Creek Coal Co. *v. K. & M. Ry. Co.* 671 (676).

Carriers required to establish joint rates on coal from the Kanawha district, W. Va., to certain destinations, not in excess of the rates now applying to such destinations from the C. & O. mines. *Id.* 671 (681).

Propriety of relation between Jellico and Coal Creek groups, not questioned. Stone & Son *v. S. Ry. Co.* 699 (701).

Rates in southern classification territory compared with those in official and western classification territories. *U. S. v. R. F. & P. R. R. Co.* 702 (703).

Rates between other points considered in determining reasonableness of rate. Rock Spring Distilling Co. *v. I. C. R. R. Co.* 18 (23); Oklahoma Traffic Asso. *v. A. T. & S. F. Ry. Co.* 129 (131); Pacific Creamery Co. *v. S. P. Co.* 405 (408); Arizona Corporation Comm. *v. A. & N. M. Ry. Co.* 424; Youngstown Sheet & Tube Co. *v. P. & L. E. R. R. Co.* 428 (433); Crowds Bros. *v. A. T. & S. F. Ry. Co.* 449 (451); Atlanta Freight Bureau *v. N. C. & St. L. Ry.* 476 (479); Interior Iowa Cities Case, 536 (537); Cedar Rapids Commercial Club *v. C. R. I. & P. Ry. Co.* 539 (541); Colorado Mfrs. Asso. *v. A. T. & S. F. Ry. Co.* 544 (546); Norman Lumber Co. *v. L. & N. R. R. Co.* 565 (578); Rates on Potash and Other Commodities, 626 (627); Fort Scott Industrial Asso. *v. St. L. & S. F. R. R. Co.* 629 (631); Rates on Flaxseed from Minneapolis to Fredonia, 633 (637); Campbell's Creek Coal Co. *v. A. A. R. R. Co.* 682 (687).

RELEASE.

In connection with reicing service. Refrigeration Charges on Fruits and Vegetables, 653 (658).

RELEASE FROM LIABILITY. See LIMITATION OF LIABILITY.**RELEASED RATE.**

Defined. Norcross Bros. Co. *v. L. & N. R. R. Co.* 109 (112).

RELIEF CLAIM.

In connection with transit privilege. Adams & Sons Co. *v. V. S. & P. Ry. Co.* 52 (57).

"RELOAD CHARGE".

Defined. Colorado Mfrs. Asso. *v. A. T. & S. F. Ry. Co.* 544 (546).

RENTAL.

For refrigerator car. Protection of Potato Shipments in Winter, 504 (506).

REPARATION. See DAMAGES.**REPORTS.**

Statistical, of carrier. St. Paul and Puget Sound Accounts, 508 (517).

Used for speculative purposes. Id., 508 (510).

Water carriers specified do not file reports. Lumber Rates from Oregon and Washington, 609 (618).

REPRISAL.

Act of reprisal by competing line. Lumber Rates from Oregon and Washington, 609 (614).

RES ADJUDICATA.

Findings in this case are without prejudice to rights of shippers to attack reasonableness of rates. Lumber Rates from Southwest to Points North, 1 (17).

Decision in former case controlling herein. Commercial Club of Terre Haute v. V. R. R. Co. 383 (390).

Question now presented was reserved in former case. Norman Lumber Co. v. L. & N. R. R. Co. 565 (568).

RESHIPPING. See also TRANSIT PRIVILEGES.

Rates on grain. Wichita Board of Trade v. A. & S. Ry. Co. 376 (378).

Lumber at Louisville, Ky. Norman Lumber Co. v. L. & N. R. R. Co. 565.

RETURNED SHIPMENTS.

Of car fittings, free. Protection of Potato Shipments in Winter, 504 (505).

RETURN LOADS.

On steamers. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (491).

REVENUE. See also CAR EARNINGS; TON PER MILE REVENUE.

Inadequacy of revenue under existing rates urged as reason why such rates should not be reduced by Commission. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (20).

Depletion of railroad, from payment of industrial road allowances, etc. Industrial Railways Case, 212 (214).

Right of carrier to receive a reasonable return on their investments, discussed. Id. 212 (218).

Net revenue per mile of road. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (480).

High average revenue. Id. 476 (485).

Averaging revenue, considered in determining reasonableness or rate. Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (676).

REWEIGHING. See WEIGHT.**RISK.**

Loss and damage claims, as an element to be considered in determining reasonableness of rates. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (23).

In transportation of hides and pelts. Crowds Bros. v. A. T. & S. F. Ry. Co. 449 (455).

Considered in determining reasonableness of rate. Kansas-California Flour Rates. 459 (462); Pardee Works v. C. R. R. Co. of N. J. 500 (503); Rates on Flaxseed from Minneapolis to Fredonia, 633 (636).

RIVER CITIES.

Argument made that cities on opposite banks of a river should be on same rate basis. Norman Lumber Co. v. L. & N. R. R. Co. 565 (569).

RIVERS.

Spoken of as "natural barriers." Norman Lumber Co. v. L. & N. R. R. Co. 565 (569).

ROPE HAUL.

Coal moves by, from mines to main line. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (687).

ROUTES. See also THROUGH ROUTES.

For reasons stated the lake route specified may be considered as not existing. *Swift & Co. v. P. R. R. Co.* 464 (467).

Alternative routes, Chattanooga to Atlanta. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (479).

Of movement should be specified in freight bill. In re Freight Bills, 496 (497). Rates to St. Louis and upper crossings adjusted so as to keep open practicable routes. *Mississippi River Case*, 530 (534).

Route held not to be natural. *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591).

Respondent held to be justified in cancelling joint rate via route by which it receives the shorter haul. *Marble Rates from Vermont Points*, 607.

Closing certain through routes on lumber in the northwest and cancelling joint rates relating thereto, in some instances permitted and in other instances not permitted. *Lumber Rates from Oregon and Washington*, 609.

Unnatural route: No through route and joint rate via, where carrier is deprived of long haul. *Id.* 609 (612).

Propriety of closing of, to be determined in view of facts and circumstances of each case. *Rates on Green Fruit from Idaho, etc.* 650 (651).

Sections 1 and 3 as well as section 15 must be considered indetermining a matter involving through routes. *Id.* 650 (651).

ROUTING.

A rule is not in violation of section 15 which gives the shipper the option either of dictating the routing or of accepting a special low rate upon condition that the traffic shall be routed by the shipper via the carrier's long-haul junctions or route or shall be routed by the carrier. *Concentration of Cotton at Points in Arkansas*, 106 (108).

It is a violation of section 15 for a carrier to deny to a shipper the benefit of a through rate on cotton concentrated in transit unless the shipper surrenders to the carrier the right to dictate intermediate routing. *Id.* 106 (108).

Where a through route exists, the shipper has the right to dictate the intermediate and terminal routing. *Id.* 106 (108).

The provision of section 15 giving shippers the right to designate routing is inflexible and nothing in the nature of exceptions or exemptions has been promulgated by the Commission. *Id.* 106 (108).

To secure line haul. *Botsford & Barrett v. P. R. R. Co.* 469 (471).

Starting off shipment without knowing ultimate destination. *C. & N. W. Ry. Reconsignment Rules*, 620 (622).

Express package with destination and routing marked thereon by shipper was offered for transportation with receipt already made out by shipper showing different but correct routing. Held that carrier was not responsible for charges incurred in transporting the shipment in accordance with the routing marked on the package. *Brackett Co. v. G. N. Express Co.* 667.

When shipper prepares bill of lading, providing for carriage to particular destination and marks a different and erroneous address on package, carrier is not responsible for transporting to destination named on package, though corrected destination is shown by bill of lading. *Id.* 667 (668).

RULES, REGULATIONS, AND PRACTICES. See also TRANSIT PRIVILEGES.

As to routing, held unreasonable. *Concentration of Cotton at Points in Arkansas*, 106.

Rules as to weighing, held unreasonable. *Schenck v. N. & W. Ry. Co.* 125.

RULES, REGULATIONS, AND PRACTICES—Continued.

Bill of lading, uniform: time limit as to claims. *In re Bills of Lading*, 417.

Freight bills and receipts. *In re Freight Bills*, 496.

Shipment of potatoes at owner's risk where shipper furnishes his own protection.

Protection of Potato Shipments in Winter, 504.

Reconsignment. *C. & N. W. Ry. Reconsignment Rules*, 620.

Demurrage and storage charges. *American Hay Co. v. C. V. Ry. Co.* 659.

ST. LOUIS AND SAN FRANCISCO RAILROAD CO.

Purchase of *C. & E. I. railroad* and *St. L. B. & M. railroad*: Commission's report of investigation and facts. *St. Louis & San Francisco Railroad Investigation* 139.

ST. LOUIS, BROWNSVILLE AND MEXICO RAILROAD.

Purchase of by the *St. L. & S. F. R. R. Co.*; Commission's report of investigation and facts. *St. Louis & San Francisco Railroad Investigation*, 139.

SCALED RATES.

Rates not scaled on percentage basis. *Swift & Co. v. P. R. R. Co.* 464 (465).

SCALE WEIGHT.

Accuracy of. *Schenck v. N. & W. Ry. Co.* 125 (126).

SECONDHAND ARTICLES.

Rates on. *Danciger v. P. C. C. & St. L. Ry. Co.* 99 (100).

SECTION 1. See also REASONABLE RATES.

Lumber Rates through Ohio River Crossings, 38 (39); Lake-and-rail Butter and Egg Rates, 45 (47); Fabrication-in-transit Charges, 70 (83); *B. R. & P. Ry. Co. v. P. Co.* 114; *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129; *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449; *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (477); Lumber Rates from Oregon and Washington, 609 (618); Rates on Green Fruit from Idaho, etc., 650 (651); *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (690).

SECTION 2. See also DISCRIMINATION.

New Orleans Board of Trade v. I. C. R. R. Co. 32; *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129; *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449.

SECTION 3. See also PREFERENCES AND PREJUDICES.

New Orleans Board of Trade v. I. C. R. R. Co. 32; Lake-and-rail Butter and Egg Rates, 45 (47); *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68); Fabrication-in-transit Charges, 70 (83); *B. R. & P. Ry. Co. v. P. Co.* 114 (118); *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129; *Board of Trade of Chicago v. A. T. & S. F. Ry. Co.* 438 (443); *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (455); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (477); Lumber Rates from Oregon and Washington, 609 (618); Rates on Green Fruit from Idaho, etc., 650 (651); *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (680); *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (683).

SECTION 4. See also LONG AND SHORT HAUL.

Rates on Grain and Grain Products to Texarkana, 35 (36); *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68); *Weisse & Co. v. C. H. & D. Ry. Co.* 374; *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (450); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (478, 487, 488); *Emlenton Petroleum Rates*, 519 (520); *Standard Oil Co. v. P. Co.* 524; Rates to North Carolina Points, 550 (551); *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (604); *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (631); *Boxboard Rates from Wilmington*, 694 (695).

SECTION 6.

Condensed Milk Rates between Illinois and Wisconsin, 43 (44). Fabrication-in-transit Charges, 70 (83, 87).

SECTION 8. *See also* ATTORNEY'S FEES; DAMAGES.

New Orleans Board of Trade v. I. C. R. R. Co. 32 (33); Botsford & Barrett v. P. R. R. Co. 469 (472).

SECTION 15. *See also* DISCLOSING INFORMATION; ROUTES; THROUGH ROUTES.

Fabrication-in-transit Charges, 70 (78); Concentration of Cotton at Points in Arkansas, 106 (107); B. R. & P. Ry. Co. v. P. Co. 114; Rates on Crushed Stone, 136 (137); In re Freight Bills, 496 (498); Paducah Board of Trade v. I. C. R. R. Co. 583 (590); Lumber Rates from Oregon and Washington, 609 (616, 618); Rates on Green Fruit from Idaho, etc., 650 (651); Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (679, 680).

SECTION 16. *See* LIMITATION OF ACTION.SECTION 20. *See also* FORMS; CARMACK AMENDMENT; ACCOUNTS.

In re Freight Bills, 496 (497); Protection of Potato Shipments in Winter, 504 (507); St. Paul and Puget Sound Accounts, 508 (509).

SENATE RESOLUTION.

Investigation in accordance with. St. Louis & San Francisco Railroad Investigation, 139.

SHERMAN ACT. *See* ANTITRUST ACT.

SHIPPER.

Disclosing information concerning. In re Freight Bills, 496 (498).

SHIPPER'S SERVICE.

All service by line carriers between the rails of the carrier and the rails of an industry, either within or without the plant, is a shipper's service and not a transportation which the carriers may perform without charge or may allow for out of the rate through divisions or otherwise when performed by the industry in performing the service. Industrial Railways Case, 212 (236, 237).

SHORT-HAULING. *See also* LINE HAUL; THROUGH ROUTES.

Line not to short-haul itself. Lumber Rates from Oregon and Washington, 609 (617).

SHORT-LINE DISTANCE. *See also* DISTANCE.

Pittsburgh, Pa., to St. Louis, Mo. Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co. 129 (130).

Chicago to Mississippi and Missouri Rivers, etc. Commercial Club of Terre Haute v. V. R. R. Co. 383 (388).

Between Cincinnati, Birmingham and Atlanta is the Cincinnati Southern. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (478).

St. Louis, Mo., to Kansas City. Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co. 629 (630).

SHORT LINES. *See also* INDUSTRIAL ROADS.

Baltimore & Sparrows Point R. R. Industrial Railways Case, 212 (356).

Benwood & Wheeling Connecting Ry. Co. Id. 212 (283).

Buffalo Creek R. R. Id. 212 (364).

Chicago, Lake Shore & Eastern R. R. Id. 212 (223).

Cuyahoga Valley R. R. Id. 212 (301).

Eastern R. R. Id. 212 (326).

Elwood, Anderson & Lapelle R. R. Id. 212 (317).

Etna & Montrose R. R. Id. 212 (310).

Lake Erie Terminal R. R. Id. 212 (362).

Lake Terminal R. R. Id. 212 (288).

Leetonia & Cherry Valley R. R. Id. 212 (286).

McKeesport Connecting Railroads. Id. 212 (349).

Monongahela Connecting R. R. Id. 212 (320).

Monongahela Southern Ry. Id. 212 (254, 335).

Newburgh & South Shore Ry. Id. 212 (295).

North Buffalo R. R. Id. 212 (371).

SHORT LINES—Continued.

- Pencoyd & Philadelphia R. R. Id. 212 (329).
- Philadelphia, Bethlehem & New England R. R. Id. 212 (270, 274).
- Pittsburgh & Ohio Valley R. R. Id. 212 (315).
- Pittsburgh, Allegheny & McKees Rocks R. R. Id. 212 (312).
- Pittsburgh Steamship Company. Id. 212 (240).
- River Terminal Ry. Id. 212 (305).
- St. Clair Terminal R. R. Id. 212 (353).
- Slackwater Connecting R. R. Id. 212 (332).
- South Buffalo Ry. Id. 212 (363).
- Union R. R. Id. 212 (330).
- Valley Connecting R. R. Id. 212 (280).
- Wheeling Bridge & Terminal Ry. Id. 212 (284).
- Wheeling Terminal Ry. Id. 212 (282).

SHORT NOTICE.

- Change of tariff on five days' notice. Condensed Milk Rates between Illinois and Wisconsin, 43 (44); Mississippi River Case, 530 (535); Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co. 539 (543).

SHRINKAGE.

- Cancellation of billing on account of. Fabrication-in-transit Charges, 70 (89).
- Natural shrinkage in weight of coal. Schenck v. N. & W. Ry. Co. 125 (127).
- Of ice. Refrigeration Charges on Fruits and Vegetables, 653 (656).

SHRINKING REVENUE.

- Divisions between rail and boat lines. Lumber Rates from Oregon and Washington, 609 (618).

SHUNTING CAR.

- Delivery at common law by shunting car upon switch clear of the main tracks. Industrial Railways Case, 212 (225).

SORTING IN TRANSIT.

- Lumber into different kinds, grades, and dimensions. Norman Lumber Co. v. L. & N. R. R. Co. 565 (566).

SOUTHERN CLASSIFICATION.

- Governs traffic from the east to Atlanta, Chattanooga, and Knoxville. Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (488).
- Territory rates compared with rates in official and western classification territories. U. S. v. R. F. & P. R. R. Co. 702 (703).

SPECIAL SERVICE.

- Free transportation of caretaker. Rock Spring Distilling Co. v. I. C. R. R. Co. 18 (23).
- Protection of Potato Shipments in Winter, 504 (506).

SPEED OF TRAINS.

- Element to be considered in determining cost of handling trains. Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co. 428 (435).

SPOTTING CARS.

- To industrial plants. Industrial Railways Case, 212 (213, 233).
- Possibly under act carriers may be required, upon reasonable compensation, to spot cars. Id. 212 (226).
- Is a special service of value to shipper. Id. 212 (226).
- Whether additional charge should be made for, not now decided. Id. 212 (227).
- Ordinarily done without any charge in addition to the published rate. Id. 212 (226).
- In England by winch and cable. Id. 212 (226).
- Performance by line carriers of plant industry service and the payment by them of allowances for the performance of such services by the industries, held to constitute an illegal rebate. Id. 212 (237).

SPREAD OF RATES.

On wheat and flour. *Arizona Corporation Comm. v. A. & N. M. Ry. Co.* 424 (426).
Discussed. *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (452).

STANDARD BILL OF LADING.

Adopted in the south instead of the Uniform Bill of Lading. In *re* Bills of Lading, 417 (418).

STATE COMMISSION.

Rate established as a result of action by, not a voluntary rate. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (484).

Somewhat responsible for reduction herein proposed by carriers. Rates to North Carolina Points, 550 (555).

Rates established by carriers to meet rates prescribed by. *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (630).

STATE RATE.

Charged to concentration point. Concentration of Cotton at Points in Arkansas, 106 (107).

STATE ROAD.

With track connection with interstate road. *Emigrant Movables to South Dakota*, 40.

STATION AGENT.

Discretion as to proper distribution of grain cars in times of shortage. *R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co.* 396.

STATISTICAL REPORTS.

Of carriers, discussed. *St. Paul and Puget Sound Accounts*, 508 (517).

STEAMSHIP COMPANIES. See **WATER CARRIERS.**

STIPULATION.

Record in another case stipulated herein. *Lumber Rates from Southwest to Points North*, 1 (2); Rates on Green Fruit from Idaho, etc., 650.

Between U. S. Steel Corporation and line carriers as to allowances. *Industrial Railways Case*, 212 (219).

Matters submitted to Commission upon. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52 (59).

STOCK OF RAILROADS.

Discussed. *St. Paul and Puget Sound Accounts*, 508 (510).

STOLEN TICKETS.

Redemption. *Miller v. A. C. L. R. R. Co.* 526.

STOPPAGE IN TRANSIT. See **TRANSIT PRIVILEGES.**

STORAGE.

Charges, freight bill should specify. In *re* Freight Bills, 496 (497).

Charges on lumber at Camden, N. J., not found unreasonable or discriminatory as compared with lower charges at Philadelphia. *Parry & Co. v. P. R. R. Co.* 559 (561).

Defendant's tariff rule limiting storage of hay at pier No. 29, East River, N. Y., to no more than five carloads for any one consignee, any cars in excess of that number to be held at New London, Conn., or other points subject to storage or demurrage charge of \$1 per car per day, not found unreasonable or unjustly prejudicial. *American Hay Co. v. C. V. Ry. Co.* 659.

STOVES.

Return of. Protection of Potato Shipments in Winter, 504 (505).

STRIKE.

Impeded ferry service. *American Hay Co. v. C. V. Ry. Co.* 659 (660).

Admitted that no demurrage should have been assessed during strike. *Id.* 659 (662).

STRONG LINES.

Rates are not to be fixed without reference to all lines operating in the territory.

Atlanta Freight Bureau *v.* N. C. & St. L. Ry. 476 (485).

STUMPAGE.

Price of as affecting rates on lumber. Stewart-Greer Lumber Co. *v.* St. L. I. M. & S. Ry. Co. 120 (121).

SUBSTITUTION OF TONNAGE. See TRANSIT PRIVILEGES.**SUPPLEMENTAL REPORT.**

Prior order modified on rehearing. Rock Spring Distilling Co. *v.* I. C. R. R. Co. 18 (27).

For reparation to interveners. New Orleans Board of Trade *v.* I. C. R. R. Co. 32.

On question of reparation. International Agricultural Corporation *v.* L. & N. R. R. Co. 391.

Montana Pass Situation, 411; Mississippi River Case, 530; Interior Iowa Cities Case, 536; Cedar Rapids Commercial Club *v.* C. R. I. & P. Ry. Co. 539; Colorado Mfrs. Asso. *v.* A. T. & S. F. Ry. Co. 544.

SUSPENSION OF RATES. See also ADVANCE IN RATES.

Power of Commission to inquire into increased charges and changes in rules.

Fabrication-in-transit Charges, 70 (78).

SWITCHING. See also INDUSTRIAL ROADS.

Absorption of charges. Denial of free switching at Monroe and other Louisiana points while granting such free switching, through absorption of charges, at Vicksburg and Jacksonville, Miss., held to unduly prejudice shippers at former points. Adams & Sons Co. *v.* V. S. & P. Ry. Co. 52 (61).

Cost of industrial switching. Fabrication-in-transit Charges, 70 (78).

Refusal to transport traffic for complainant railroad company from and to industries on defendant's lines within the switching limits of New Castle, Pa., held to be in violation of section 3. B. R. & P. Ry. Co. *v.* P. Co. 114 (118).

Classed as extra service. Industrial Railways Case, 212 (235).

Practices in England and elsewhere, discussed. *Id.* 212 (235).

Spotting cars to industrial plants. *Id.* 212 (213, 233).

Performance by line carriers of plant industry service, and the payment by them of allowances for the performance of such services by the industries, held to constitute an illegal rebate. *Id.* 212 (237).

For switching coal and coke from Potomac yard, Va., to Alexandria, Va., proposed increased charge held unreasonable, but carrier permitted to advance present charge. Alexandria Switching Charges, 381.

Cost of, referred to in determining reasonableness of rate. Youngstown Sheet & Tube Co. *v.* P. & L. E. R. R. Co. 428 (432).

Failure to absorb switching charges on grain while such charges are absorbed on other articles, not competitive with grain, held not to constitute an undue prejudice. Chicago Board of Trade *v.* A. T. & S. F. Ry. Co. 438.

Which carrier shall bear the burden of absorbing switching charges, is a matter which might be more satisfactorily adjusted through negotiation than by decision. *Id.* 438 (439).

Charge of 4 cents per 100 pounds for switching grain in carloads at Bellefonte, Pa., held unreasonable. Botsford & Barrett *v.* P. R. R. Co. 469.

Policy of defendant should be to avoid nominal switching charge on traffic from connections. *Id.* 469 (471).

Charge, freight bill should specify. *In re* Freight Bills, 496 (497).

Northern carriers should discontinue the absorption of switching charges on lumber from Covington and Newport to Cincinnati, or eliminate the bridge toll in the rates from Louisville. Norman Lumber Co. *v.* L. & N. R. R. Co. 565.

SWITCHING—Continued.

Argument made that cities on opposite banks of a river should be on same rate basis. *Id.* 565 (569).

Absorption of charges. Rates on Flaxseed from Minneapolis to Fredonia, 633 (638).

Cost of, considered in determining reasonableness of rate. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

SYSTEM.

A road is built and operated as a whole and local rates are not to be made with respect to difficulties of each particular portion, charging cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (569).

A carrier has no right to single out a piece of expensive road and make the local traffic bear an undue portion of the expense of its maintenance of construction. *Id.* 565 (569).

TAP LINES. See **INDUSTRIAL ROADS.**

TARE WEIGHT.

Differed at point of origin and destination. *Schenck v. N. & W. Ry. Co.* 125 (126).

TARIFFS.

Should be clear, precise and definite. *Fabrication-in-transit Charges*, 70 (86).

Commission's authority to permit waiver of tariff provisions as to time limit within which claims must be presented. *In re Bills of Lading*, 417.

A provision applicable to lumber trimmings should be incorporated in defendant's tariff. *Green Bros. Box & Lumber Co. v. C. & N. W. Ry. Co.* 473 (475).

Rates published without concurrence of certain lines. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (489).

Effective on five days' notice. *Mississippi River Case*, 530 (535); *Cedar Rapids Commercial Club v. C. R. I. & P. Ry. Co.* 539 (543).

Ambiguous provision, commented upon. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (572).

Arrangements between rail and water lines condemned. *Lumber Rates from Oregon and Washington*, 609.

Should be indicated on freight bill. *In re Freight Bills*, 496 (497).

TAXES.

Increase in. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437).

Amount charged for. *Fabrication-in-transit Charges*, 70 (79).

TEAM TRACK SERVICE.

A rate that is reasonable for the team-track and siding service is clearly less than reasonable when it includes much more costly service. *Industrial Railways Case*, 212 (236).

TEMPERATURE.

Difference in temperature as an element to be considered in determining cost of handling traffic. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (435).

TERMINAL CHARGES.

A separation of, from the line rate, seems to be contemplated by the act. *Industrial Railways Case*, 212 (236).

TERMINAL COMPANY.

That a rate increase is for the purpose of securing a greater division, deemed a fair return, to a terminal line, is no justification for the increase. *Rates on Crushed Stone*, 136 (137, 138).

TERMINAL EXPENSE.

Additional charge. Duluth Log Rates, 420 (422).

Discussed. Straw rates from Stations in Missouri, 562 (564).

Considered in determining reasonableness of rate. Hughes Creek Coal Co. v. K. & M. Ry. Co. 671 (678).

TERMINAL POINT.

Referred to as a point accessible by deep-water craft. Santa Rosa Traffic Assn. v. S. P. Co. 65.

TERMINAL RATES.

Denied at Santa Rosa while granted at San Jose and other California points.

Held, undue prejudice. Santa Rosa Traffic Assn. v. S. P. Co. 65 (69).

TERMINAL SERVICE.

Performance by line carriers of plant industry service or the payment by them of allowances for the performance of such service by the industries, held to constitute an illegal rebate. Industrial Railways Case, 212 (237).

TERMINALS.

Right of carrier to protect its terminals against its competitors. Botsford & Barrett v. P. R. R. Co. 469 (472).

THREE LINE HAUL. See LINE HAUL.**THROUGH AND LOCAL.**

Joint rate in excess of combination of intermediates held unreasonable. Weiss & Co. v. C. H. & D. Ry. Co. 374.

Joint through rate is usually lower than combination of intermediates. Wichita Board of Trade v. A. & S. Ry. Co. 376 (377).

THROUGH RATES. See COMBINATION RATE; JOINT THROUGH RATE.**THROUGH ROUTES. See also JOINT RATES; ROUTES.**

Cancellation of through routes involving three-line haul in favor of other two-line haul routes between same points under same rates, justified. Lumber Rates through Ohio River Crossings, 38.

Complaint, seeking order requiring narrow-gauge line to restore part of track it had destroyed and establish through routes, dismissed. Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co. 62 (64).

Required by law to be established in order that traffic may be moved without delays or the handicaps of reshipment. Concentration of Cotton at Points in Arkansas, 106 (108).

Carrier released from obligation to participate in a through route which does not include all or substantially all of its line or lines except when an unreasonably long or circuitous route would otherwise be created; but the shipper has the right to designate both the intermediate and terminal routing. *Id.* 106 (108).

Commission cannot establish a through route which gives to the originating carrier less than the full length of its line haul unless to do so would make such route unreasonably long. Wichita Board of Trade v. A. & S. Ry. Co. 376 (379).

Through route required to be maintained for coarse salt from Cuylerville, N. Y., to Chicago Junction, through Akron, Ohio. Swift & Co. v. P. R. R. Co. 464.

A through bill of lading is, as to carriers recognizing it, conclusive evidence of the existence of a through route. *Id.* 464 (466).

Cancellation of, not justified. Rates on Green Fruit from Idaho, etc., 650.

Argued for though no prayer therefor in complaint. Paducah Board of Trade v. I. C. R. R. Co. 583 (590, 592).

A carrier cannot reserve to itself the long haul if to do so works to the detriment of shippers. *Id.* 583 (591).

Carrier held to be justified in cancelling joint rate via route by which it received the shorter haul. Marble Rates from Vermont Points, 607.

THROUGH ROUTES—Continued.

Commission may not require a carrier without its consent to embrace in such through route substantially less than the entire length of its railroad unless to do so would make such route unreasonably long. *Id.* 607 (608).

Closing certain through routes on lumber in the northwest and cancellation of joint rates relating thereto, in some instances permitted and in some instances not permitted. *Lumber Rates from Oregon and Washington*, 609.

Provision of act limiting power of Commission to establish through routes. *Id.* 609 (617).

Commission adheres to doctrine laid down in *Flour City S. S. Co. v. L. V. R. R. Co.*, 24 I. C. C. 184, as to power of Commission in matter of through routes. *Id.* 609 (618); *Rates on Green Fruit from Idaho, etc.*, 650.

Matter of through routes is not dealt with alone in Section 15, but Commission must read, together with that provision, those contained in sections 1 and 3. *Lumber Rates from Oregon and Washington*, 609 (618).

Cancellation of, due to failure of carriers to agree upon divisions, not justified. *Wichita Business Asso. v. K. C. M. & O. Ry. Co.* 669 (670).

Held that no through route exists as a practical matter on account of the prohibitive rate demanded. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (674).

Under all ordinary conditions a shipper has a right to through routes to distant markets. *Id.* 671 (677).

On coal from Kanawha district, W. Va., to Cincinnati switching territory over the K. & M. road and C. & O. road and its connections should not be granted; such a route would give the K. & M. a short haul of much less than entire length of its line. *Id.* 671 (679).

Denial of certain through routes to complainant while granting such routes to others held not to constitute an unlawful discrimination under the principle that the test of discrimination is the ability of one of the carriers participating in the two through routes to put an end to the discrimination by its own act. *Id.* 671 (680).

Where through routes exist, obligation to furnish cars is joint upon all carriers therein. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (690).

THROUGH ROUTES AND JOINT RATES.

Asked for; but case disposed of on other grounds. *B. R. & P. Ry. Co. v. P. Co.* 114 (117-118).

TICKETS.

Refusal to redeem any ticket or portion thereof, which has been mislaid, lost, destroyed, or stolen, unless request for refund is accompanied by unused transportation, held not unreasonable or unlawful. *Miller v. A. C. L. R. R. Co.* 526.

TIPPLES.

Coal dumped into cars from. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (688).

TOLLS. See BRIDGE TOLL.**TON PER MILE EARNINGS.**

Referred to in determining reasonableness of rate. *Stewart-Greer Lumber Co. v. St. L. I. M. & S. Ry. Co.* 120 (121).

TON PER MILE REVENUE.

Of carrier below the general average. *Lumber Rates from the Southwest to Points North*, 1 (9).

Decreases as distance increases. *Id.* 1 (13).

TON PER MILE REVENUE—Continued.

Average revenue per ton per mile for all railways in country from all freight and from cattle. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (24).

Statement of, advanced in attacking reasonableness of rates. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (130).

Usually decreases with increase of distance. *Wichita Board of Trade v. A. & S. Ry. Co.* 376 (377).

Should decrease as distance increases. *Pardee Works v. C. R. R. Co. of N. J.* 500 (502); *Interior Iowa Cities Case*, 536 (537); *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 544 (545).

Average considered in determining reasonableness of rate. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (486); *Pardee Works v. C. R. R. Co. of N. J.* 500 (502).

Considered in determining reasonableness of rates. *Lumber Rates from the Southwest to Points North*, 1 (8); *Emigrant Movables from South Dakota*, 40 (41); *Maier & Co. v. S. P. Co.* 103 (104, 105); *Pacific Creamery Co. v. S. P. Co.* 405 (406); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (429, 434, 436); *Crowdus Bros. v. A. T. & S. F. Ry. Co.* 449 (452); *Pardee Works v. C. R. R. Co. of N. J.* 500 (502); *Interior Iowa Cities Case*, 536 (537); *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (577); *Paducah Board of Trade v. I. C. R. R. Co.* 583 (591); *Fort Scott Industrial Asso. v. St. L. & S. F. R. R. Co.* 629 (632); *Rates on Flaxseed from Minneapolis to Fredonia*, 633 (636).

TONNAGE.

Transportation of forest products in 1913 constituted 33 per cent of the aggregate freight tonnage of the *Kansas City Southern Ry. Co.* *Lumber Rates from the Southwest to Points North*, 1 (8).

It is estimated that 140,000,000 pounds or 7,000 cars of butter, eggs, and poultry would be available during season of navigation via Duluth gateway. *Lake-and-rail Butter and Egg Rates*, 45 (48).

Average car tonnage of traffic involved. *Pacific Creamery Co. v. S. P. Co.* 405 (406).

Greater number of cars per train, urged as an element to be considered in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

That traffic is offered in trainload lots can not be made basis of rates different from those applied to shipments in single carloads. *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664 (665).

Considered in determining propriety of rates. *Lumber Rates from the Southwest to Points North*, 1 (8); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (437); *Springfield Traffic Bureau v. St. L. & S. F. R. R. Co.* 600 (603); *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (674).

TRACKAGE ARRANGEMENT.

Between N. C. & St. L. and A. G. S. Railways. *Lumber Rates Local Points to Chattanooga*, 646 (647).

TRACK BUYER.

Distribution of cars for grain to. *R. R. Comrs. of Iowa v. C. R. I. & P. Ry. Co.* 396 (399).

TRACKS.

Complaint, seeking order requiring narrow-gauge line to restore part of track it had destroyed dismissed for want of jurisdiction. *Richmond-Eureka Mining Co. v. Eureka Nevada Ry. Co.* 62 (64).

TRACK SCALES.

In charge of joint agent. *Campbell's Creek Coal Co. v. A. A. R. R. Co.* 682 (687).

TRAIN LOADS.

Greater number of cars per train, urged as an element to be considered in determining reasonableness of rate. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (431).

Fact that traffic is hauled in trainload lots cannot be made basis of rates different from those applied to shipments in single carloads. *Woodward-Bennett Co. v. S. P. L. A. & S. L. R. R. Co.* 664 (665).

TRAIN-MILE EARNINGS.

Considered in determining reasonableness of rate. *Duluth Log Rates*, 420 (421); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433).

TRAIN SPEED.

Element considered in determining cost of handling traffic. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (435).

TRAIN STOPS.

Considered in determining cost of handling traffic. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (435).

TRANSCONTINENTAL RATE.

Generally blanketed and largely affected by water competition. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (388).

TRANSFER CHARGE.

From vessel to car. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (491).

TRANSFER OF LOADS.

Cost per car. *C. & N. W. Ry. Reconsignment Rules*, 620 (622).

TRANSFER PRIVILEGE. See also TRANSIT PRIVILEGES.

On grain. *Gadow v. C. St. P. M. & O. Ry. Co.* 457.

TRANSFERRING IN TRANSIT. See CONCENTRATION.**TRANSFER SERVICE.**

Switching movement necessary to accomplish. *Hughes Creek Coal Co. v. K. & M. Ry. Co.* 671 (678).

At New York. *American Hay Co. v. C. V. Ry. Co.* 659 (660).

TRANSIT PRIVILEGES.

Carriers not permitted to cancel proportional rates from Illinois and Missouri. Rates on Grain and Grain Products to Texarkana, 35.

Limited to traffic originating on defendant's line. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52.

Denial of free switching in connection with transit privilege at Monroe and other Louisiana points while granting such privilege at Vicksburg, Miss., subjects shippers at the former points to undue prejudice. *Id.* 52.

May be productive of much good. *Fabrication-in-transit Charges*, 70 (76).

Different kinds of transit privileges enumerated. *Id.* 70 (76).

Transit is a practice or regulation included within section 15, over which the Commission has jurisdiction. *Id.* 70 (78).

Basis: The fundamental basis and chief justification of transit is the equalization of rates and the prevention of discriminations. *Id.* 70 (82).

BILLING:

Provision should be made for cancellation of billing in excess of fabricated material, and for the use of the oldest billing for this purpose. *Id.* 70 (89).

Provision should be made for cancellation of inbound billing to cover outbound shipments, local consumption, waste or shrinkage. *Id.* 70 (89).

Provision should be made for checking of unfabricated and fabricated material with billing on hand. *Id.* 70 (89).

TRANSIT PRIVILEGES—Continued.

CHARGES:

- No increase permitted where inequality would result. Id. 70 (89).
- Additional expense incident to transit service may be reflected in the general level of rates on the article which enjoys the service. Id. 70 (82).
- Carriers ordered to cancel tariff increasing transit charges. Id. 70 (89).
- Freight bill should specify. In re Freight Bills, 496 (497).

EXTENSION:

- Commission can not look with favor upon an extension of transit to include additional processes unless it is clearly shown to be necessary in order to avoid discrimination, promote commerce, and effect other proper and lawful results.

FABRICATION-IN-TRANSIT CHARGES:

- Records and Accounts: Provision should be made for proper accounting in connection with transit privilege. Id. 70 (89).

IN GENERAL:

- Transit involves rate difficulties peculiarly its own. These difficulties and the confusion which frequently results therefrom obscure the publication of rates and deprive the tariffs of one of their most essential qualities, namely, clearness. Intricacies of this nature should be most thoroughly analyzed and weighed before transit is extended into new fields. To deal with transit as an established service in a limited field is one thing, and to follow a policy of its indefinite extension is another. Id. 70 (76).

- List of articles upon fabrication in transit if permitted should include all articles that are necessary for the fabrication of sections of bridges and buildings, and should be uniform in respondents' tariffs. Id. 70 (89).

SUBSTITUTION:

- Rules should be uniform. Id. 70.
- Ordinarily transit can only be accorded products which move at the same or very nearly the same rates as the material from which they were made. Id. 70 (76).
- Carriers should specifically provide for substitution of material drawn from different lines and different territories. Id. 70 (89).
- Substitution in transit. Unlawful to allow substitution without clear tariff authority therefor. Id. 70 (88).
- Duty rests upon carriers to make their tariff rules on this point, precise, definite, clear and lawful; while cooperation is required on the part of persons using such privileges. Id. 70 (86).
- The rate, transit service, and regulations governing it, taken collectively, are a unit. Id. 70 (88).
- Rules relating to routing held unreasonable. Concentration of cotton at points in Arkansas, 106.
- Transit less desirable than the breaking of rates. Wichita Board of Trade v. A. & S. Ry. Co. 376 (378).
- On grain at Wichita. Id. 376.
- Withdrawal by defendant of transfer privilege on grain at Barton, Wis., pending complainant's refusal to permit inspection of his transit accounts, not found unlawful. Gadow v. C. St. P. M. & O. Ry. Co. 457.
- On grain. Kansas-California Flour Rates, 459 (460).
- On lumber, logs, etc. Norman Lumber Co. v. L. & N. R. R. Co. 565 (572).

TRANSPORTATION.

- Duty of carrier to furnish, under section 1. Lumber Rates through Ohio River Crossings, 38 (39).
- Duty of carrier to furnish. Lake-and-rail Butter and Egg Rates, 45 (46, 47).

TRANSPORTATION—Continued.

Water lines on great lakes required to transport dairy products and furnish reasonable equipment therefor, including refrigeration; refusal to do so held to constitute an undue prejudice to such traffic. *Lake-and-rail Butter and Egg Rates*, 45 (51).

Commission ought not to impose a charge not specified in tariff where the omission to state such a charge was not due to inadvertence. *Lee v. St. L. S. W. Ry. Co.* 101 (102).

The service of the line carrier is confined to its own rails and delivery is made, at common law, just clear of its right of way. *Industrial Railway Case*, 212 (235).

When shipper is willing to accept the risk of weather conditions, carriers should not refuse to accept shipments. *Protection of Potato Shipments in Winter*, 504 (505).

Obligation to furnish through transportation, made mandatory by the act. *C. & N. W. Ry. Reconsignment Rules*, 620 (624).

TRANSPORTATION CONDITIONS.

Differ east and west of Chicago. *Interior Iowa Cities Case*, 536 (537).

Considered in determining reasonableness of rate. *Maier & Co. v. S. P. Co.* 103 (105); *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (389); *Pacific Creamery Co. v. S. P. Co.* 405 (407); *Duluth Log Rates*, 420 (422); *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (433); *Botsford & Barrett v. P. R. R. Co.* 469 (472); *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (484, 487); *Colorado Mfrs. Asso. v. A. T. & S. F. Ry. Co.* 544 (545).

TRANSPORTATION EXPENSE.

Additional, on account of additional movement. *Concentration of Cotton at Points in Arkansas*, 106 (107).

TRANSHIPMENT.

Lake cargo coal. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 423 (436).
At Norfolk, Charleston and Savannah. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (489).

TRUNK-LINE CONDITIONS.

As producing lower rates. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (484).

TUNNEL.

Cost of construction and maintenance not to be charged to local traffic. *Norman Lumber Co. v. L. & N. R. R. Co.* 565 (569).

TWO-LINE HAUL. See LINE HAUL.**UNIFORM BILL OF LADING. See also BILL OF LADING.**

Recommended. In re Bills of Lading, 417.

UNIFORM DEMURRAGE CODE.

Tariff unreasonable because it does not contain a rule similar to rule 8, section B-2, as to bunching, referred to. *American Hay Co. v. C. V. Ry. Co.* 659 (662).

UNIFORMITY.

Of treatment is not always to be strictly enforced. *Adams & Sons Co. v. V. S. & P. Ry. Co.* 52 (60).

UNIT.

Transit rate, privilege, and regulations governing same are a unit. *Fabrication-in-transit Charges*, 70 (88).

UNITS OF COSTS.

Of switching movement. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (432, 436).

UNLOADING IN TRANSIT.

Norman Lumber Co. v. L. & N. R. R. Co. 565 (566).

UNNATURAL ROUTE.

No through route and joint rate. Lumber Rates from Oregon and Washington, 609 (612).

UNUSED TICKETS.

Redemption. *Miller v. A. C. L. R. R. Co.* 526.

VALUE OF COMMODITY.

As a factor in determining reasonableness of a rate. *Danciger v. P. C. C. & St. L. Ry. Co.* 99 (100); Duluth Log Rates, 420 (422); *Pardee Works v. C. R. R. Co. of N. J.* 500 (503). Rates on Flaxseed from Minneapolis to Fredonia, 633 (636).

VENTILATION.

Protection of Potato Shipments in Winter, 504.

Tomato shipments. Rates on Tomatoes from Jacksonville, 522 (523).

VOLUME OF TRAFFIC.

Considered in determining the propriety of compelling water lines to install refrigeration equipment. Lake-and-rail Butter and Egg Rates, 45 (51).

Whether volume of traffic would have developed had rate been lower, is speculative. *Erickson Co. v. C. M. & St. P. Ry. Co.* 414 (416).

Considered in determining reasonableness of rate. Commercial Club of Terre Haute *v. V. R. R. Co.* 383 (389); Youngstown Sheet & Tube Co. *v. P. & L. E. R. R. Co.* 428 (431); Kansas-California Flour Rates, 459 (461); Paducah Board of Trade *v. I. C. R. R. Co.* 593 (598).

Urged as reason for according low rate. *U. S. v. R. F. & P. R. R. Co.* 702 (703).

VOLUNTARY ACTION.

Of industries in submitting subject of industrial roads situation to Commission. Industrial Railways Case, 212 (218).

VOLUNTARY RATE.

Rate established as result of action of state commission not a voluntary rate.

Atlanta Freight Bureau *v. N. C. & St. L. Ry.* 476 (484).

Rate compelled by competition, not voluntary. Emlenton Petroleum Rates, 519 (521).

Contention made that rate is not voluntary because brought about by coercion of state governor and others. Rates to North Carolina Points, 550 (557).

VOLUNTEERED SERVICES.

Described. Industrial Railways Case, 212 (226).

WAGES.

Of employees, element to be considered in determining cost of handling traffic. Youngstown Sheet & Tube Co. *v. P. & L. E. R. R. Co.* 428 (435).

WAGON HAUL.

Compared with haul via electric line. Santa Rosa Traffic Asso. *v. S. P. Co.* 65 (67).

WAREHOUSE DELIVERY.

Discussed. Industrial Railways Case, 212 (226).

WAREHOUSEMAN.

Carrier as. American Hay Co. *v. C. V. Ry. Co.* 659 (662).

WASTE.

Cancellation of billing on account of. Fabrication-in-transit Charges, 70 (89).

WATER CARRIERS.

Should not be allowed to shirk the public duty which the use and enjoyment of the great lakes navigation improvement impose upon them. Lake-and-rail Butter and Egg Rates, 45 (51).

WATER CARRIERS—Continued.

On great lakes required to transport dairy products and furnish reasonable equipment therefor, including refrigeration; refusal so to do held to constitute an undue prejudice to such traffic. *Id.* 45 (51).

Jurisdiction of Commission over port-to-port traffic. *St. Paul and Puget Sound Accounts*, 508 (516).

The traffic and tariff arrangements of the C. M. & St. P. and G. N. roads with certain Puget Sound boat lines serving particular mills criticized and condemned. *Lumber Rates from Oregon and Washington*, 609.

Boat lines involved do not make pretense of being interstate carriers beyond concurring in railroad's tariffs. They file no reports. *Id.* 609 (618).

WATER COMPETITION.

Has not depressed the rates on live stock to and from Owensboro, notwithstanding the presence of a water route at that point. *Rock Spring Distilling Co. v. I. C. R. R. Co.* 18 (22).

Degree of potential competition held not sufficient to be a factor in establishment of water competitive rates. *Santa Rosa Traffic Asso. v. S. P. Co.* 65 (68).

Urged as defense to rates attacked as unduly prejudicial. *Oklahoma Traffic Asso. v. A. T. & S. F. Ry. Co.* 129 (133, 134).

Transcontinental traffic affected by. *Commercial Club of Terre Haute v. V. R. R. Co.* 383 (388).

Urged as determining rates. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (490).

As tending to produce low rates. *Id.* 476 (484).

Effect of, on divisions of water lines. *Id.* 476 (490).

Ocean-and-rail routes control rates from east to southeast. *Id.* 476 (491).

As an advantage. *Id.* 476 (482).

Held not to justify lower rates at Cairo than at Paducah. *Paducah Board of Trade v. I. C. R. R. Co.* 533.

As justifying lower rates to one point while maintaining higher rates to another point. *Id.* 533 (539).

WATER-LOCKED MILLS.

Joint rates from, on west side of Puget Sound. *Lumber Rates from Oregon and Washington*, 609 (618).

WATER MILES. See CONSTRUCTIVE MILEAGE.**WATER RATES.**

Ocean-and-rail rates and constructive mileage. *Atlanta Freight Bureau v. N. C. & St. L. Ry.* 476 (488).

WATERWAYS.

Puget Sound boat lines. *Lumber Rates from Oregon and Washington*, 609 (618).

WEAK LINES.

Rates are not to be fixed without reference to all lines operating in the territory.

Atlanta Freight Bureau v. N. C. & St. L. Ry. 476 (485).

WEATHER.

Interference, element to be considered in determining cost of handling traffic. *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.* 428 (435).

Protection against. Protection of Potato Shipments in Winter, 504.

WEIGHING BUREAU.

Representative of, inspecting daily reports of transit grain. *Gadow v. C. St. P. M. & O. Ry. Co.* 457 (458).

WEIGHT. See also MINIMUM WEIGHT.

Rule that charges will be assessed on weights as ascertained at defendant's regular weighing stations and that this rule will not be departed from, held unreasonable. *Schenck v. N. & W. Ry. Co.* 125.